



OFFICIAL DOCUMENTS
OF THE
Presbytery of Albany
PRESBYTERY OF ALBANY,

EXHIBITING THE
TRIALS

OF THE

Rev. John Chester & Mr. Mark Tucker;
"

TOGETHER WITH

THE WHOLE CASE

OF THE

Rev. Hooper Cumming.

*Published by Order of the Presbytery, in conformity
to a resolution of the Synod of Albany.*

SCHENECTADY:

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OFFICIAL DOCUMENTS.

SCHENECTADY, 18th February, 1817.

THE Presbytery of Albany met agreeably to adjournment, and after a sermon by the Rev. John Chester, from Philipians iii. 8. was constituted with prayer.

PRESENT—MINISTERS.

Rev. NOAH M. WELLS, *Moderator*.

Rev. SIMON HOSACK, D. D.

Rev. ELIPHALET NOTT, D. D.

Rev. THOMAS HALIDAY,

Rev. REUBEN SEARS,

Rev. JONATHAN HOVEY,

Rev. JOHN CHESTER,

Rev. HOOPER CUMMING,

Rev. HALSEY A. WOOD,

Rev. REUBEN SMITH.

Members
constitut-
ing the
court.

ELDERS.

ANANIAS PLATT,	1st Church, Albany,
JOHN L. WINNE,	2d Church, Albany,
JAMES FRAZER,	Johnstown,
JOHN MURPHY,	New Scotland,
JOSEPH HANCHARD,	Milton,
ALEXANDER KELLY,	Schenectady,
EVERT HAGERMAN,	Amsterdam,
JOHN M'CREA,	Ballston,
JONATHAN I. CLAYTON,	Duanesburgh,
SYLVANUS PARKINSON,	Carlisle,
EARL STIMSON,	East Galway,
SAMUEL JONES,	West Galway,
JOHN CHAMBERLAIN,	Charlton,
ABRAHAM BEECHER,	Edinburgh.

Dr. Nott was chosen moderator, and Mr. Wood, clerk, for the ensuing year.

3d Church
applies to
be received

A memorial was presented by commissioners from the third presbyterian congregation of Albany, requesting that they might be taken under the care of presbytery.

On motion, resolved, that this request be granted.

3d Church
presents a
call to Mr.
Cumming.

The commissioners presented a call from the third presbyterian congregation, Albany, for the Rev. Hooper Cumming.

Ordered, That it lie on the table.

Schenectady
consents
to a dissolution
of
his charge.

A communication from the congregation of Schenectady, was laid before presbytery, declaring that they should not oppose the removal of the Rev. Hooper Cumming, from his present charge.

He accepts
the call.

The call having been found in order, was put into the hands of Mr. Cumming for his consideration. Mr. Cumming informed presbytery that he had for some time considered the subject, and deemed it his duty to accept the call.

Schenectady
vacant.

Resolved, That the pastoral relation between the Rev. Hooper Cumming and the congregation of Schenectady, be and hereby is dissolved.

Mr. Wood was appointed to announce the same from the pulpit on the next Lord's day.

Mr. Winne
states re-
ports a-
gainst a
member of
presbytery

Mr. John L. Winne then stated that common fame charges a member of this presbytery with unchristian walk, and requested that a committee be appointed to enquire whether these charges be of a nature to require the notice of this court.

A commit-
tee to in-
vestigate.

Whereupon, *Resolved*, That Drs. Nott and Hosack and Mr. M'Crea be a committee to enquire into the same, and if they shall be found such as to require the judicial inter-

ference of this presbytery, the committee shall specify the charges and name the witnesses, by whom they may be substantiated.

The committee to whom was referred the resolution passed at the suggestion of Mr. Winne brought in the following report :

“ That they have attended to the painful duty assigned them and regret to be obliged to state, that after mature deliberation and patient enquiry, that some of the reports in circulation are such that in their opinion this presbytery cannot without a violation of its trust, suffer them to pass without enquiring into the same, as well for the honor of religion as to afford the individual impeached an opportunity of repelling them if false.

Committee's report.

“ That the member alluded to is the Rev. Hooper Cumming, and that the charges and witnesses are as follows :

Charges against Mr. Cumming.

“ 1. PLAGIARISM.

“ In preaching the compositions of other men in place of his own composition, and endeavouring to induce a belief that they were his own.

“ WITNESSES.

Chancellor Kent,	E. F. Backus,
Thomas M'Auley,	William Johnson,
Rev. John Chester,	Samuel S. Davis,
Benjamin B. Wisner,	William Adams.

“ II. BREACH OF PROMISE.

“ 1. *Specification.* Promise solemnly and deliberately made to Dr. Richards and the Rev. Mr. Spring, not to make so free use as he had done of other men's labours, and to the presbytery of Jersey of future and continued amendment.

“ WITNESS.

“ Minutes of the Presbytery of Jersey.

Commit-
tee's re-
port.

“ II. *Specification.* Breach of similar de-
clarations made to other individuals.

“ WITNESSES.

Charges a-
gainst Mr.
Cumming.

“ Dr. M'Auley, Mr. Jonathan Crane.

—

“ III. DELIBERATE FALSEHOOD AND PREVA-
RICATION.

“ I. *Specification.* In denying that he had
preached Toplady's Sermons in Albany, as
reported, and in speaking of said report as a
slander.

“ WITNESSES.

“ Charles R. Webster and Wife,
Thomas M'Auley,
Rev. Robert B. E. M'Leod,
Col. Charles Kane.

“ II. *Specification.* In denying that he
had preached Mr. Channing's Sermon at
Milton on the 11th December, as reported,
and in representing, contrary to truth, the re-
sult of a conversation had with Mr. Chester
and several other gentlemen, in Albany, on
that subject.

“ WITNESSES.

“ Dr. Thomas M'Auley, William Johnson,
Jonathan Crane, Alexander Kelly,
Uriah Marvin, and Isaac Hutton.

“ III. *Specification.* In declaring that his
manuscripts had been submitted to the
chancellor of the state, who had compared
the same with Toplady, and acquitted him
of the plagiarism imputed.

“ WITNESSES.

“ Rev. Robert B. E. M'Leod,
Charles R. Webster and Wife,
Miss Abigail Steele,
Thomas M'Auley.”

The chairman of the committee, Dr. Nott,
having read the report, which he accompa-

nied with some explanatory remarks, stated to presbytery that tho' there were other floating reports, the committee had not been referred to any source of information concerning them; that on the subject of intemperance, although there had appeared before them evidence of some levities and indiscretions, which were for the most part of a private nature, and might justify private caution and advice, still, nothing had appeared before them as far as they had heard the witnesses that justified a charge on that subject, nor did it appear that even the reports were so public as to require investigation; that the committee wished therefore, to lay that charge entirely out of the question, and he now made these remarks to take off, from the minds of the members of presbytery, any undue effect arising therefrom, and that he might place Mr. Cumming's character in as benign a light on that article as he could, having done this he had discharged his duty to presbytery and to Mr. Cumming as well as he was able, on the painful subject submitted to them.

Statement
by the
chairman
of the com-
mittee.

The moderator having resumed the chair, Mr. Cumming wished to know whether it was the fact, that public fame did so loudly proclaim the charges as to require the judicial interference of this presbytery. The committee had given it as their opinion, he wished to know whether the presbytery agreed with them.

Enquiry as
to the ex-
tent of pub-
lic fame in
the premi-
ses.

A motion was made that presbytery disagree with the committee, and that their report be rejected; which motion was lost.

A motion was made to introduce testimony to prove the fact of the public fame; which motion was afterward withdrawn.

A motion was made and carried to insti-

tute an enquiry of all the ministers and elders present, as to the extent of public fame.

The enquiry being ended, on motion resolved that the report of the committee be accepted.

On motion, resolved, that a copy of the report of the committee be put in the hands of Mr. Cumming ; which was done.

Mr. Cumming requested delay. Mr. Cumming stated to presbytery that as the charges against him referred to the records of the presbytery of Jersey, and he also had witnesses in Jersey to be procured for his defence, he could not be ready for trial earlier than the fourth Tuesday in April next.

Whereupon, resolved, That the presbytery will proceed to the trial of the Rev. Hooper Cumming on the above charges, on the 4th Tuesday (22d) of April next, in the presbyterian church in Schenectady, at two o'clock, P. M. and that the stated clerk cite the parties concerned, together with their witnesses, as the constitution of the presbyterian church directs.

Committee of investigation may call a meeting of presbytery. *Resolved*, That the committee to whom Mr. Winnes's resolution was referred be directed to meet at their discretion, and that if any facts or circumstances connected with the charges already on record shall come before them of sufficient importance to require a meeting of presbytery previous to the meeting for the trial of Mr. Cumming, they shall take measures to convene the same, and that the stated clerk be directed to cite such witnesses as he shall be directed to cite by said committee or by Mr. Cumming, according to the constitution of the presbyterian church, always giving notice to the parties respectively of the names of witnesses so cited.

The following is a list of witnesses furnish-

ed by Mr. Cumming—Lawrence Van Kleeck, Daniel C. Price, Peter E. Elmendorf, John T. B. Graham, Isaac Lucas, Miss Abigail Steele, Rev. Thomas Picton, Rev. Buckley Carl, Mrs. Cumming wife of Rev. Hooper Cumming, Uriah Marvin, Isaac Hutton, Richard Duncan, William Eaton, George M'Queen, James Baily

Mr. Cum-
ming's wit-
nesses.

The moderator stated, that the committee had discharged a very painful duty in making the report which had been accepted. He did not mean to intimate an opinion in favor of the truth of the charges tabled, but so extensive was the public fame that presbytery were bound to take notice of it, for their own sakes as well as for the sake of Mr. Cumming and the church ; still he thought they had a duty to perform. He read the 5th section of the 1st chapter of forms of process, and added that the presbytery had had a long session, and he knew were anxious to adjourn, yet he did hope that they would consent to remain until to-morrow morning, and appoint a committee to converse with Mr. Cumming, and see if there was no way left to prevent the business from going to a public trial : if there was not, he should have performed the last duty he owed Mr. Cumming and to the public on this afflicting business.

Moderator
urges an
interview
with Mr.
Cumming
to prevent
the need of
trial.

Presbytery consented to meet to-morrow morning. Mr. Cumming opposed the appointment of a committee, said his family was sick and he could not wait on any committee that evening at his house ; he was exhausted himself and though he should always be willing to see any of his brethren who called on him, still, since the business had come before presbytery, he did not

Mr. Cum-
ming refu-
ses.

wish to have it settled, but chose to have it go to a public trial.

The moderator said that he had nothing more to say—he had expressed what he deemed was his duty ; but if Mr. Cumming was opposed to it, he would not press it.

Mr. Haliday wished Mr. Cumming to withdraw—he did.

He then moved a resolution for the appointment of a committee to converse with Mr. Cumming, and see if he would not make some concessions or give some explanations that might prevent the necessity of a trial.

A committee to wait on Mr. Cumming.

The moderator begged the presbytery to do it, possibly it might be attended with success and it could do no injury. Mr. Haliday's resolution was carried and Dr. Nott and Mr. Haliday were appointed a committee.

Mr. Cumming was called in and informed of what had taken place. He said that he could not possibly see them that evening ; but if the presbytery were disposed to wait, he would meet them to-morrow morning.

Adjourned to meet to-morrow at 10 o'clock—concluded with prayer.

Friday morning, 10 o'clock.

Committee's report of the interview with Mr. Cumming.

Met according to adjournment and opened with prayer. The committee appointed to converse with Mr. Cumming reported, that they had met with him and begged him if there was any thing in which he thought he had done wrong, to give presbytery some satisfaction.

That he told them that he had nothing to acknowledge ; that he was a persecuted man, and that he should put his defence on the ground of persecution.

On motion, resolved, that Dr. Hosack and

Elder M'Crea, be a committee to conduct the trial of Mr. Cumming on the part of the presbytery. Committee to conduct his trial,

The following communication was handed to the moderator by Mr. Kelly, and read from the chair.

“ Mr. Moderator,

The Commissioners appointed to prosecute a call of the Rev. Hooper Cumming, for the third Presbyterian Society in the city of Albany, would respectfully suggest, that the said call having been presented to and accepted by Mr. Cumming, they, as members of the Society, feel a lively interest in whatever relates to his character, as well as the character of the members of this presbytery. Communication from Messrs. Eaton, Graham, and Lucas, stating charges against Mr. Chester & Mr. Tucker.

They would in connection with this subject state, that common fame charges the Rev. John Chester, one of the ministers of this presbytery and Mr. Mark Tucker a licenciate under its care, with conduct unbecoming the christian character, and would respectfully request that a committee be appointed to ascertain and report whether the charges are of such a nature as to require the investigation of the same.

(Signed) *William Eaton,
Isaac Lucas,
John T. B. Graham.”*

On motion,

Resolved, that Dr. Eliphalet Nott, Rev. Mr. Haliday and Mr. Kelly, be a committee to enquire whether the charges referred to be of a nature to require the judicial interference of this presbytery, and if so to reduce them to form, and report the same, together with the witnesses to substantiate them. A committee to investigate.

Closed with prayer.

ALBANY, MARCH 14th, 1817.

Presbytery met at the presbyterian church in the city of Albany, in consequence of a call from the moderator. Present as follows :

Members
of the
Court.

Rev. ELIPHALET NOTT, D.D. *Moderator*,
Rev. THOMAS HALIDAY,
Rev. JOHN CHESTER,
Rev. NOAH M. WELLS,
Rev. HOOPER CUMMING,
Rev. HALSEY A. WOOD, *Clerk*,
Rev. REUBEN SMITH.

ELDERS.

ISAAC HUTTON,	1st Church, Albany,
JOHN L. WINNE,	2d Church, Albany,
DANIEL CHANDLER,	Schenectady,
NATHANIEL BOOTH,	Ballston,
SYLVANUS PARKINSON,	Carlisle,
JAMES WANDS,	New Scotland.

The com-
mittee re-
ports, with
an explan-
ation by
the chair-
man.

The committee to whom was referred a communication laid before presbytery at its last meeting, and signed by Messrs. Eaton, Graham and Lucas, informed presbytery that they were prepared to report on the same. Leave being granted, the chairman of the committee read the report (see the same as amended page 14) and then stated, that during the sittings of the committee it had been declared that it was reported in Albany that Mr. Chester had been guilty of falsehood in a declaration he made at Schenectady, before the committee appointed on Mr. Cumming's case (of which committee the chairman of the present was chairman) as this alleged falsehood, if it did take place, was in the breasts of that committee, and therefore private (because its proceedings were confidential;) and as the assertion that a trans-

action said to have taken place before them, on one day in Schenectady and said to have become public fame on the very next day in Albany, seemed to impeach their fidelity with respect to the trust reposed in them, this committee did not feel at liberty to incorporate that charge of falsehood in their report; still, however, they deemed it their duty to state the fact to presbytery: and as the committee were desirous that every individual concerned, should have it in his power to avail himself of the whole truth, and that the entire case in all its connections should come fairly and fully before presbytery, without any concealment or disguise, they are now as members of this presbytery willing to have their report so modified as to embrace this charge also, if it shall be deemed expedient.

The committee reports, with a verbal explanation.

On motion of Mr Chester, the report was recommitted for the purpose suggested.

The report recommitted.

The chairman of the committee then further stated, that an additional charge, involving several specifications, against Mr. Mark Tucker; (which has become public since the appointment of this committee, and had been laid before them in a private communication) had been under their consideration: this charge the committee of course did not feel at liberty to incorporate in their report; still however, for the reasons already stated, they were willing and desirous, if Mr. Tucker would consent. that the said charge should also be embodied therein.

Further statement of the committee.

Mr. Tucker being present did consent; and the committee were farther directed to modify their report accordingly.

Directions of the Court.

[Recess till 3 o'clock.]

The committee whose report had been re-

committed presented the same as amended, in the words following :

“ The committee whose report upon the communication signed by Messrs. Eaton, Graham and Lucas, was recommitted for amendment,

“ REPORT—

Report of the committee appointed to investigate reports against Mr. Chester & Mr. Tucker.

“ That after much enquiry and mature deliberation, they are of opinion that the reports in circulation, are of such a nature and so widely spread, that it is the duty of the presbytery to search into the same, that if they can be substantiated, the presbytery may stand acquitted of unfaithfulness ; and if they are false, the individuals impeached may have it in their power to repel the calumny. In presenting to presbytery the charges alleged, the committee have adhered to a written statement handed to them by the above named gentlemen, adding to the same nothing but the requisite specification of time, place and persons, as given by those gentlemen, or by the witnesses to whom the committee were referred.”

Chairman explains.

[Here the chairman suspended the reading of the report to remark, that in referring to the written communication of Messrs. Eaton, Graham and Lucas it was not the design of the committee to place them before the public in the light of prosecutors ; he believed they made their communication in writing at the request of the committee ; that they appeared before the committee only when requested, and had conducted with uniform propriety when they were before them. The charges reported by the committee to the presbytery, are reported on their own responsibility. Not that it is their intention to intimate an opinion as to their

truth : the committee have not enquired after truth, but after report ; and have endeavoured to reduce mere report to some tangible form, and bring it before presbytery. And though common fame says much that is false, they do believe, if she impeaches a member of this body, and information of the fact comes before them, in their judicial capacity, that they owe it to the members impeached, to the church and to God, solemnly and without favour or affection to try that impeachment according to law and evidence, that they may bring the truth to light, and place it by their solemn and deliberate decision before the public.]

“ The form of the charges as made out by the committee, is as follows :

Committee's report continued.

“ I. Common fame charges the Rev. John Chester, with the industrious circulation of reports, injurious to the character of the Rev. Hooper Cumming, to wit: preaching at Milton on the 11th of Dec. 1816, a sermon of the Rev. Mr. Channing.

Charges against Mr. Chester.

“ II. With making, when in conversation with Mr. Mark Tucker, a charge of intoxication against the Rev. Hooper Cumming, at the house of U. Marvin, and with falsehood in denying the same when charged therewith, in the presence of U. Marvin and I. Hutton.”

The report was accepted. *Ordered*, That copies of it be furnished to Mr. Chester and Mr. Tucker.

After recess :

On motion, *Resolved*, That this presbytery will institute a trial of the Rev. John Chester and of Mr. Mark Tucker, on the above charges.

Trial of Mr. Chester and Mr. Tucker appointed.

Resolved, That presbytery will proceed to

the trial of the Rev. John Chester on Tuesday, the 8th day of April next, at the first presbyterian church in the city of Albany, at 11 o'clock, A. M.

Ordered, That the stated clerk cite both parties and their witnesses, to appear at the same time and place.

Committee
to conduct
the same.

The Rev Noah M. Wells and the elder Isaac Hutton, were appointed a committee to conduct the trial.

Resolved, That presbytery will proceed to the trial of Mr. Mark Tucker immediately after the trial of the Rev. John Chester shall be closed and that the same committee conduct both.

Ordered, That the stated clerk cite the parties and their witnesses.

Order res-
pecting ci-
tations of
witnesses.

Resolved, That it shall be the duty of the stated clerk to cite all such witnesses as shall, ten days previous to the time of trial, be named to him by either of the parties, always communicating to the one party the names of any witnesses cited by request of the other.

Dr. Nott introduced the following resolutions, which being read and considered, were adopted as rules of this presbytery, viz :

Rules of
order to be
observed in
conducting
trials.

I. Witnesses in all trials before this presbytery shall have the charge or charges on which the accused are to be tried, read to them ; after which their testimony shall be taken down. The accused shall be at liberty to cross examine them, as shall also every member of the judicatory, but no question shall be put or answered but through the moderator.

II. No question shall be put to any witness, unless by unanimous consent, till it be reduced to writing : when answered it shall be handed to the clerk, (if deemed of any im-

portance, either by the presbytery or by the accused) that it may with the answer, be recorded.

Rules of
order to be
observed in
conducting
trials.

III. Questions of order, if an appeal is made from the chair, shall be decided without debate, unless at an interlocutory meeting. This rule shall not be construed, to preclude the accused from stating his reasons for believing why any question he wished to put to a witness had a bearing on his cause, or the committee from urging any reason against its being put

Saturday morning, 6 o'clock, met and opened with prayer. Dr. Nott introduced the following resolution which was read and adopted as a rule of presbytery.

IV. In all the trials pending before this presbytery, every witness cited shall be considered as cited for the whole prosecution, and may be examined on either of the charges.

Ordered, That the stated clerk serve each of the individuals cited to answer, with a copy of this resolution.

On motion of Mr. Winne, presbytery proceeded to reconsider the resolution fixing the time of the trials of Messrs. Chester and Tucker.

It was moved to alter the same from the 8th of April to the 25th of March, and the question being taken, the votes stood as follows :

Ayes.—Mr. Haliday, Mr. Chester, Mr. Wood, Mr. Winne, and Mr. Parkinson.—5.

Nays.—Mr. Cumming, Mr. Smith, Mr. Chandler, Mr. Booth, and Mr. Hutton.—5.

The moderator giving the casting vote in the affirmative; the motion was carried.

On motion of Mr. Cumming, presbytery reversed this decision, and the time for the

trials remained as before determined. Adjourned. Closed with prayer.

ALBANY, APRIL 8th, 1817.

Presbytery met according to adjournment, and was constituted with prayer by the moderator.

PRESENT AS FOLLOWS.

MINISTERS.

Members
of the
Court.

Rev. ELIPHALET NOTT, D. D. *Moderator.*
SIMON HOSACK, D. D.
THOMAS HALIDAY,
JOHN CHESTER,
NOAH M. WELLS,
HOOPER CUMMING,
HALSEY A. WOOD,
REUBEN SMITH.

ELDERS.

ISAAC HUTTON,	1st Church, Albany,
JOHN L. WINNE,	2d Church, Albany,
JAMES WANDS,	New-Scotland.
JONATHAN CRANE,	Schenectady,
JAMES FERGUSON,	Duanesburgh,
JOSEPH CLIZBEE,	Amsterdam,
HENRY PAWLING,	Johnstown.

Rev. J. M. Bradford, D. D. and the Rev. John De Witt, of the classis of Albany. Rev. Jonas Coe, D. D. and the Rev. Samuel Blatchford, D. D. of the presbytery of Columbia, being present, were invited and took their seats as corresponding members.

Mr. Chester's trial.

The committee appointed at the last meeting to conduct the trials of the Rev. John Chester and Mr. Mark Tucker, being ready to proceed, the stated clerk informed the presbytery, that he had forwarded citations to all the witnesses whose names were on the list furnished by Messrs. Eaton, Graham and

Lucas, as the same was handed him by the committee—viz.

Mr. Ches-
ter's Trial.

Dr. Nott, Dr. Hosack, Isaac Hutton, Uriah Marvin, Rev. H. Cumming, Dr. Willard and wife, Abraham Eights, Chancellor Kent, Charles R. Webster, Theodorus V. W. Graham, Gilbert Stewart, E. F. Backus, John L. Winne, J. Boardman, Mark Tucker, Major Smith, Mr. J. Warren, Chester Bulkley.

Witnesses
cited.

The charges were then read to Mr. Chester; after which the moderator addressed the court and the defendant on trial, in the words following :

“BRETHREN,

“After many years of peace and tranquility in our churches, we meet under circumstances peculiarly afflictive. Two of our ministers and one of our licentiates, have been impeached, and we are now to enter on the solemn and the painful duty of trying those impeachments.

Moderator's ad-
dress.

Some of the allegations in the cause now to issue, involve the doctrine of *Slander*, which is of two kinds, DELIBERATE and INCONSIDERATE.

Deliberate Slander, is the telling of either truth or falsehood, for the purpose of producing misery.

Inconsiderate Slander, is the telling of either truth or falsehood that tends to produce misery, without a due regard to consequences.

Under one or the other of these definitions, is comprehended slander of every sort; and the telling of either truth or falsehood, that is not comprehended under the one or the other, is not slander.

In the prosecution of the cause now at issue, as well as in the prosecution of another

Mr. Ches-
ter's Trial.



Moderator's ad-
dress.

cause pending before this judicature, it will be necessary to distinguish between *making a charge*; *asserting a fact*; *circulating a report*, and *giving an opinion* or *joining in a conversation concerning a report already circulated*.

For, though every man is responsible to God and to society, for the charges he makes, for the facts he asserts, for the reports he circulates, for the opinions he gives, and for the conversations he joins in; these several things are distinct, and, because they are so, no man can be rightfully tried for the one, under an allegation for the other.

After charges are made out, whatever latitude may have before been allowed, the import of the terms in which they are expressed, constitutes a boundary, which, during the enquiry, ought not to be transgressed, and which indeed cannot be, unless by consent, without hazarding the truth and violating the rights of the accused. For, though innocent, and though prepared to make his defence against the charges on record, and which he expects to meet, he may not be prepared to defend himself against a charge which he did not expect to meet, and which is covertly placed on the record, and becomes inferentially, and by surprize to him, a point at issue.

To make a charge against a man of a crime, *is to charge in terms against that man, that crime*.

To assert a fact, is to assert that the thing spoken of did exist or take place.

To circulate a report is to convey the knowledge of it to some *one person* at least, who was not previously in the possession of it. To circulate a report *industriously*, is to convey the knowledge of it to several or many such

persons. To circulate it slanderously, is to convey the knowledge of it with a direct view to misery, when it becomes deliberate slander, or it is to circulate it without a due regard to consequences, when it becomes inconsiderate slander.

Mr. Ches-
ter's Trial.

Moderator's address.

In trials of slander, where the allegation is the making a charge, the asserting of a fact or the circulating a report, it is the motive at the time of charging, asserting, or circulating, and *not the truth or falsehood* of the thing charged, the fact asserted, or the report circulated, that gives the act of charging, asserting, or circulating, the character of slander; and it is only because it is assumed, in the present instance, that the acts of charging and circulating have that character, that they can be brought to trial under a charge in the present form, which is for the *industrious circulation of reports injurious to the character of the Rev. Hooper Cumming*. It is the injuriousness of a report that makes it slanderous. Reports, therefore, which are not injurious, whatever else they may be, are not slanderous; and, because they are not, cannot be tried under an allegation of slander. Of this nature is undeserved praise, or the circulation of untruths in a man's favour.—Both are offences against morality, but the offender must be tried, if tried at all, under a charge of criminal partiality in the one case, and for falsehood in the other; and not, in either case, for slandering his brother.

In trials for slander, whether before civil or ecclesiastical courts, but especially before ecclesiastical, the truth is allowed to be given in evidence. But though the truth is to be allowed to be given in evidence, and though, where this defence is not set up, the

Mr. Ches-
ter's trial.
Moderator's ad-
dress.

defendant may be allowed to show that there was at the time credible grounds to believe that the *crime charged*, or the *report circulated*, was true; still not the satisfactorily showing of this, nor even the satisfactory establishment of the truth itself, shall, if the motive be bad, or even defective, be deemed by the judicature a justification, so that the crime charged, or the report circulated, shall be declared no slander. The truth or falsehood may indeed diminish or increase the degree of criminality, but it will not alter the nature of the action, which is *ascertained and settled* by the *motive in charging or circulating*, and not by the *matter* circulated or charged. And the pleading of the truth in evidence where the plea itself is false, is at once an evidence of malice and an aggravation of the previous offence.

The circulation of either truth or falsehood, unqualified by motive, is not a moral action.

The circulation of *either truth or falsehood*, where the motive is bad, or even defective, is *slander*.

On the contrary, *neither the circulating of truth or falsehood*, where the motive is *good* and the manner unexceptionable, is *slander*.

The benign communication of an evil report to a father, of his son; to a guardian, of his ward; or to a moral association, of one of its members, the motive being the *good of the accused*, is not slander.

The communication of an evil report, to third persons believed to be in danger, to put them on their guard against imposition or injury, the motive being the good of others, is not slander.

The communicating an evil report in prosecuting an offender before the proper tribu-

nal, the motive being *public justice*, is not slander; and finally, the communicating an evil report, when the communication is inseparable from the due performance of some indispensable duty, the act being unavoidable, *is not slander*.

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With respect to making enquiries, holding conversations and giving opinions concerning reports, already in general circulation, though these several acts, in strictness of morality, and at the bar of conscience and of God, follow, for the most part. the same rules which we have already laid down; still, in all other cases, the lines of distinction between slanderous and allowable utterance are so delicate, and the outward act, from which only the inward motive can be inferred, so necessarily equivocal, as scarcely to allow of bringing them within the limits of human decision.

The man who wantonly fabricates and obtrudes upon community, an injurious report against his neighbour, is both a liar and a slanderer. And he who, after that report is obtruded on community, and without enquiring after its truth or falsehood, wantonly conveys it to regions which it had not reached, though not a liar, is a slanderer.

But, after the injurious report is spread, and to the extent it is spread, to determine that it may not be enquired after, nor spoken of, would be a refinement on libels, which no prudent court, I should think, would be disposed to make; or, were it made, which no enlightened community would be disposed to submit to.

For, to say nothing of the equal jeopardy in which it would place him, who enquired, or conversed, or gave his opinion to ascertain the truth, and him who did this to prevent its

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ascertainment; him who did this to alleviate, and him who did this to aggravate the scandal; him who did this as matter of mere conversation, and him who did it out of malice prepense; to say nothing of this, a refinement on libels, that would absolutely shut out all discussion of topics where character was concerned; would shut out with it, could it prevail, all that information concerning men and events, so necessary to the well-being, I had almost said the existence of society, and would end in that moral despotism over liberty of speech, which would be oppressive to many, injurious to the good, and favourable only to impostors, hypocrites, and knaves.

I have thought it my duty to say thus much on this point, in entering on the trial.

With respect to the charge of falsehood, it speaks for itself, and the nature of the offence is understood by every man who has been brought up in the church of Christ. If proven it fixes a stain on the ministerial character, not indeed indelible, but which nothing but those tears which Peter shed, can wash away.

Our first enquiry now is after truth; and we ought, with the solemnity that befits judgements on character, more precious than property, or even than life, to examine candidly, faithfully, and without favour or affection, to pronounce between this, our accused brother, and that christian public, to whom our judgment is to be returned. Till we have ascertained what is truth, and pronounced on it, our duty is judicial merely; and we are not only not to conceal the truth ourselves, but as we expect to answer it to God, we are not to permit it to be perverted or concealed by others. This done, truth ascertained and

declared, the door of forgiveness in Christ's house is always open, and the offender, how great soever his offence, may, by repentance and reformation, enter it."

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The moderator having resumed his seat, Mr. Chester addressed the court in the words following :

"I am anxious, in my present circumstances, to conduct that part of the trial that devolves upon me, in the spirit of meekness, and in the temper of a disciple and a minister of the "Prince of Peace." I have no fears of a personal kind respecting the result of this investigation. I am supported by the honest consciousness of innocence, by the full persuasion, that the exhibition of truth will promote my defence, and in the humble reliance upon Him who teaches his followers in such an hour as this what they shall say.

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My defence lies in the simple truth, which I will assist to the utmost of my power, to bring before you. There is no part of my conduct which I wish to shield, as it relates to the subject before you, but on the other hand I am sincerely desirous to bring the truth to view, without colouring or disguise. The charges as they stand, are of a character to impeach the purity and involve the reputation of a minister of the gospel.

It will not be forgotten that charges are easily made. I am not conscious of having done wrong. Yet I am convinced that even in our best intentions, we are liable to error. We may be deceived both in our actions and the motives from which they spring. And if I have been left to be actuated by improper feelings, or if under the dominion of good feelings I have been left to improper conduct, I hope to have the fortitude to confess it, the

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principle to mourn for it, the virtue to repent of it, and the christian magnanimity to make every reparation in my power to the injured, the church and to the world.

Before I proceed to reply specifically to the charges, I beg leave to present a very brief history of the concern I have had in the transactions which have placed me before you.

When the Rev. Hooper Cumming joined the presbytery of Albany, which was on the day of my installation in the Chapel-street church, I felt towards him nothing but good will, and a sincere desire to find in him, a friend and a brother. As far as was in my power I manifested in my conduct this disposition of kindness. I freely expressed it to *him* and to *others*. I was acquainted with his unfortunate history in Jersey, and on that account I really felt towards him more tenderness, and friendly solicitude, than I probably should have felt, under any other circumstances.

The sabbath after the adjournment of presbytery, in February, 1816, he preached in Dr. Neill's church, and it was alleged by some of the most respectable persons of the congregation, that he had delivered two of Mr. Toplady's sermons, in the place of his own compositions. I could not doubt this fact, without questioning the veracity of some of the most honorable and spotless men in the city. I afterwards conversed with Dr. Neill upon this subject. after he had had an interview with Mr. Cumming. I understood Dr. Neill to say that Mr. Cumming had confessed his fault, and had declared that if it was thought proper for him to supply Dr. Neill's pulpit in his absence to Philadelphia, agreeable to the appointment of presbytery, he would go home, and write two sermons

that would place him beyond the reach of suspicion as a plagiarist.

If the subject of Mr. Cumming's plagiarism or that of any other man has been introduced into company where I have been ; if I have said any thing, I may have spoken of the act as I trust I always shall do, with abhorrence.

I will never so far participate, in what appears to me degrading to the ministerial character, which strikes at the respectability and usefulness of my brethren, and which if extensively practised would degrade the American clergy, as not to bear my pointed testimony against it—I am not conscious of having advanced any opinion on this subject, which it was not my honor to entertain, and my duty under the circumstances to express.

After Dr Neill left this city, I was sincerely anxious to avoid any interference with his congregation, that might appear impertinent on the one hand, or to manifest any indifference that should look unkind or unfriendly on the other. I could not but feel a deep interest in the concerns of a congregation, which from its character and influence, was worthy of a respectful attention. Though I felt I had no right to be obtrusive, and was certain that I ought not to be indifferent to any thing that related to its order, respectability or steadfastness.

When it was rumoured that the Rev. Mr. Cumming was to be the successor of Dr. Neill, I was utterly aloof from any suspicion of wishing to prevent him. As far as I know our congregation had been prudent and silent.

Though I had said very little to my most confidential friends in that congregation, still

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I had expressed to my brethren of our session, my deep solicitude for their welfare. At all times I had avowed my disposition to serve them to the extent of my power. I had frequently enjoined the duty of imploring upon them the divine blessing, and according to my feeble ability I have endeavoured to perform it. Until the occurrence, now to be mentioned, I had avoided every thing that at all interfered either with Mr. Cumming or the concerns of the first church.

Three months had now elapsed since Dr. Neill was dismissed, and nearly nine since the rumour of the Toplady business, I do not think that any person can say, that I had said any thing of Mr. Cumming, after the excitement of the February sermons had passed away. The transactions in which I am implicated would have been buried in the bosom of friendship, had not Dr. Neill left the city. From his going away until about the first of November, I was in no way concerned with Mr. Cumming, and I never should have been, had not the circumstances occurred which I am now to relate. About this time Mr. Uriah Marvin, a member of our session and the friend of my confidence, a man whose sincerity is never questioned, and whose veracity is unimpeachable, in whose family Mr. Cumming has been a frequent inmate, and who has received from him the most friendly hospitality, called upon me and said he wished to ask my advice in a question of duty and of conscience. He told me that he and his family had come to the knowledge of facts, which he thought he was bound to reveal for the benefit of his friends in the old church.

Mr. Marvin said that he had always been considered the friend of Mr. Cumming. He

did wish him every blessing, he hoped he would be useful in the churches, and outlive his faults. But he was convinced that he was not a proper man to have the charge of a large congregation in this city. He then stated that he had become satisfied from long observation, that his family were convinced of the same fact and that it had been observed by some of Mr. Cumming's particular friends who had freely conversed with him on the same subject, that Mr. Cumming was in the habit of making very unadvised and improper use of ardent spirits—that he drank so much that he felt it his duty to put liquor beyond his reach, and that sometimes he appeared so much affected with its use, that he had prevented his going out in the evening, for fear that he should injure himself in the view of the world and wound the cause of the Redeemer, if he should be seen in his light and flighty situation.

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The question was, should he communicate these facts to the brethren of the old session; I advised him not to do so, in the then present state of things, and added, that perhaps Mr. Cumming would not be called, and that his saying any thing about it, would do more hurt than good; and here the conversation ended.

The next time Mr. Marvin spoke on this subject, in my hearing, was before all the members of our session, when the same statement was substantially made; and we were requested to make such a use of it as prudence and exigencies might dictate.

I had come to the knowledge of these facts, entirely without solicitation or exertion on my part. They came to me in a way to demand my attention.

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I could not escape from them ; they appeared to point out a path of plain but painful duty. I communicated them to one member of this presbytery in whose experience and judgment I had more confidence than in my own, and who gave me the same advice which I had given to Mr. Marvin.

I had heard it mentioned, that conduct similar to that imputed to Mr. Cumming at Mr. Marvin's, have occurred in other places. I had ascertained from Mr. Marvin himself, that he had repeatedly admonished Mr. Cumming relative to those improprieties of conduct, which he attributed to the improper and intemperate use of spiritous liquors, but to no purpose—under these circumstances I did wish to unbosom myself to some confidential friend, and to have an interchange of information and opinion respecting the whole course of Mr. Cumming's conduct, for the regulation of my own duty in my future acts. It was with these views that the interview was held and the communication made to Mr. Tucker, in the retirement of the closet and in the confidence of friendship. With whom could I have made this interchange of opinion and information, with more propriety than with Mr. Tucker ? To whom could I have imparted what I had heard of Mr. Cumming, with more safety to Mr. Cumming, than to Mr. Tucker. He resided in Schenectady. He was a preacher of the gospel. He was my intimate friend. I did it in confidence. If I was mistaken in judgment, I was not in motive.

I am confident that it will not be shown, that I mentioned Mr. Marvin's communication to any person but to those referred to above, until the thing had been made public by Mr. Cumming himself, after our interview

at Mr. Hutton's. All private expostulation was at an end from that time. We were at issue before the world.

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Things were in this situation when the presbytery were called to install Mr. Hovey at Milton. On that occasion Mr. Cumming did preach not his own sermon, but the sermon of the Rev. Mr. Channing, of Boston, which I heard him preach at the ordination of the Rev. John Codman, in Dorchester, December. 1808. The circumstances under which I heard that sermon, impressed it deeply on my mind. Since it has been printed, I have often read it with attention. It is too striking to be forgotten. I immediately recognized, and was able, in many parts, to anticipate Mr. Cumming, while he was reciting it, both in the turn of thought and expression.

The charge that I have industriously circulated this report is not true, tho' it is true I have mentioned it to those whom I thought, and still think had a right to know it. In this I have been actuated by motives which my own heart condemns not, and which I trust your hearts will not condemn.

I am sure that I have never sought occasion to mention a circumstance so painful and degrading. If I shall be convinced that I have industriously circulated this report, I shall be convinced that I have done wrong, for I am well aware, that in the language of the charge, the report is injurious alike to the moral and ministerial character of the Rev. Hooper Cumming. I was acquainted with the fact that Mr. Cumming had been suspended from the ministry in New-Jersey, and had understood that his restoration had been founded on his most solemn promise, not to repeat the offence of preaching other men's

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sermons in the place of his own. In mentioning that he had preached Mr Channing's sermon I was not guilty of slander in any sense. The offence was of the most public nature, and required the most prompt and public exposure.

The mode of treating an offending brother as laid down by our Saviour, does not apply to public offences, but to those of a private, secret character, where the offence is supposed to be known only to the offending and the offended brother. Then to expose his fault without private expostulation and kind attempts to bring the offender to repentance, would be a violation of the law of love; and the person who thus treated another, would be accountable as a slanderer. But where the offence is in its own nature public—where the injury is not on the limb but on the body—where it is committed in the most open manner, it is a proper subject of public animadversion. It looses every feature of a private character and all its claim to forbearance, of course it is not a violation of any law of charity, to speak of it as I have done.

I was not balancing rights but duties. I felt myself not only at liberty, but bound to mention an occurrence that fell under my own observation, to any Minister or Elder of this presbytery, who are pledged to watch over each other. Beside, I had reason to believe that this was by no means the first or a solitary instance of plagiarism, the same thing has been publicly charged in Albany and Schenectady. I did not in any view consider it as a private offence. Nor can I perceive how I violated any law of charity in the statement I have made of the fact. In the interview which I had with Mr. Cumming at Mr.

Hutton's, I understood him to say that he had made a very free use of Mr. Channing's sermon at Milton; that he had been induced to do so from the pressure of ministerial duties, and his consequent inability from want of time, to prepare himself for that occasion. At this interview, he promised he would not in future make the use he had done of other men's sermons; that he would in future throw himself upon his own resources, that it was his fixed and unalterable purpose to do so, and requested me and the other gentlemen to state this resolution whenever we had opportunity.

At the interview at Mr. Hutton's, Mr. Cumming said, Mr. Chester, Mr. Tucker told me that you told him, that Mr. Marvin told you that I was so drunk at his house, that he would not permit me to go out. I replied I never did tell Mr. Tucker that you was drunk at Mr. Marvin's, nor did I authorize him to publish any thing that I had said to him; but if he felt himself at liberty to repeat any of my conversations, he had a right to understand me, that you were in an improper state from the unadvised use of liquor to go abroad.

I supposed at the time, that Mr. Cumming had either mistaken or misrepresented Mr. Tucker's communication. I do not believe that it will appear in proof, that I have mentioned this circumstance to any but those mentioned, until after the conversation at Mr. Hutton's, and that my truth and consistency, from which I have never, I am persuaded, departed, will be confirmed by the testimony.

I made substantially the same statement before the committee at Schenectady, but as I have had no access to the testimony from the committee, nor have I had any communication from them on this subject; I shall

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rest myself until the witnesses are examined, with the simple and unqualified denial of the charges. I shall avail myself of all my privileges upon this subject. I intend to pursue the charge of falsehood to its author or authors, and endeavour to develop the truth. I stand before you charged by common fame, of an alleged crime said to be committed in a confidential examination, before members of this presbytery. Had I been guilty, no man had a right to expose me. The alleged fault was of the most secret character and entitled to all the sacred regards of charity. It received none of them, and the first intimation of error, which I received, was from the brazen trumpet of common fame.

We come now to the history of the third presbyterian congregation of the city of Albany. After that congregation was legally established, the trustees called upon me and requested me to preside in the meeting to be convened for the purpose of electing a pastor; I assured them of my readiness to serve them. I did preside and formed their papers as far as my agency was necessary. As to that society I have never interfered with it in word or deed. It was out of my power to be more obliging or respectful than I was to them. In the discharge of an official duty, I acted without any other responsibility than that which official integrity required. I endeavoured to act up to the spirit of our constitution, and in the spirit of a faithful minister. I had nothing to do with their choice, nor did I open my lips about it, either in or out of the meeting. From the trustees and all concerned I received kind and courteous treatment. The

opinion of their commissioners has been expressed to this presbytery, in their memorial laid on the table in February last.

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Notwithstanding all that is past, I think I can truly affirm that I have not felt nor do I feel one emotion of anger or resentment to an individual of that congregation. I hope to show them that I am above the littleness of envy, or the desire of revenge. That the only retaliation that I can exert is to do them good, and the only triumph that would gratify, would be to convince them that they have mistaken both my heart and my character.

Of the commissioners I have nothing to say, but that two of them were entire strangers to me, and with the third, I maintained, as far as related to myself a civil intercourse; that I never have, nor do I now feel the slightest spirit of hostility.

As to the third congregation, that I wish it might be built up in the purity and order of the gospel, and as far as my conduct could evince anything it has proved this; and sir, however it may be mistaken it will never evince any thing else. I still wish them every blessing from the great head of the church; my heart's desire and prayer to God for them is, that they may be saved.

Thus brethren I have endeavoured to give a concise but faithful, and to the best of my knowledge and belief, a true and fair statement of the concern I have had in the transactions, which have placed me at your bar.

I am prepared for the investigation of what lies before us. Tho' I have not provoked it; tho' I do not think I merit the imputation, still I neither fear nor shrink from any scrutiny. If my defence shall involve others, let it be re-

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membered that I have been driven to the post I occupy.

Having made the foregoing brief but candid statement, I have only to add specifically and in form the positions I deny, the positions I admit, and the precise grounds on which I mean, before this tribunal, to place my defence.

1st. I deny having industriously circulated, if indeed I can be said to have circulated at all, a report of the Rev. H. Cumming having preached at Milton, a sermon of the Rev. Mr. Channing.

2d. I admit however that it has been my painful duty to assert, of my own knowledge, and to a few individuals, that fact ; and my defence is, that such was the nature, the publicity and aggravation of the offence from antecedent offences, confessions and promises, that it was incumbent on me as a christian and a minister, to assert what it is now incumbent on me more publickly to *repeat* and to *prove* that the Rev. H. Cumming, did so preach, and in the presence of this judicature, a sermon of the Rev. Mr. Channing, to which he did not add one sentence, and of which he omitted only one member of a sentence ; tho' it suited the occasion on which the sermon was originally preached, did not suit the occasion on which Mr. Cumming recited the same.

3d. I deny that I have in terms charged the Rev. Hooper Cumming with unqualified intoxication, at the house of Mr. U. Marvin.

4th. I admit that I have in confidential conversations and from good motives, told Mr. M. Tucker that Mr. U. Marvin had told me that he had seen Mr. Cumming at his house, in such a situation, as he supposed from the improper use of spiritous liquors, that he pre-

vented him from going out, that he might not expose himself; and my defence for having told Mr. Tucker this is the same as my defence for now telling it to this presbytery; I believed it was true at the time; I still believe it true, and it has become my painful duty to prove before you that it is true.

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5th. I deny that I was ever to my knowledge, charged in the presence of I. Hutton and U. Marvin, with having made an unqualified charge of intoxication against the Rev. H. Cumming at the house of U. Marvin, in the terms and form in which it stands charged against me in this second charge: and of course,

6th. I deny that *when charged therewith* in their presence, I ever to my knowledge denied the same.

7th. I however admit that the Rev. Hooper Cumming did ask me in the presence of those gentlemen, *whether I had* authorized Mr. M. Tucker to say that Mr. Marvin told me that Mr. Cumming was so drunk at his house, that he would not suffer him to go out.

8th. I admit that I answered, that I had not authorized Mr. Tucker to state that Mr. Marvin told me that he was drunk at his house, which answer was strictly and literally true, and not only true but kind, and the most kind which was within my power consistently with truth to make.

9th. The allegation contained in this third charge, I absolutely deny. It is an utter falsehood, and a falsehood be the author of it who he may, for which there is no apology, because I not only did not make the declaration imputed to me in this charge, but when interrogated by Mr. Cumming himself, whether Mr. Marvin told me that Mr.

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Cumming was drunk at his house, I expressly and distinctly told Mr. Cumming in reply, that Mr. Marvin did not tell me that Mr. Cumming was drunk at his house, but that he was in such a state there, that he did not like to have him seen by other people.

I deeply and solemnly regret to be obliged to put my defence on a ground that involves the moral character of any man, especially of any minister. But my defence lies wholly in the truth ; I have no other defence that I can make ; I have not voluntarily placed myself at your bar ; I have not intentionally done one act to produce that state of things which has placed me here. But since I am placed here under circumstances in which no option is left, I shall not shrink from the duty I am called to perform. Disavowing therefore all technical distinctions, and declining to avail myself of any advantages that I might take of informality in the manner of procedure, or of error in the matter of the charges tabled against me, I now put both the truth of all I have said touching the several subjects in question, and also the right I had as a man, a christian and a minister, to say the same, at issue before this tribunal."

Mr. Chester having concluded, the court proceeded to take the testimony under the respective charges.

FIRST CHARGE.

1st Charge. *Common fame charges the Rev. John Chester with the industrious circulation of reports injurious to the character of the Rev. Hooper Cumming, to wit:*

Preaching at Milton, on the 11th December, 1816, a sermon of the Rev. Mr. Channing.

Examination of Dr. Nott, sworn on the part of the prosecution.

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Com. Do you know that the Rev. John Chester has industriously circulated a report, of Mr. Cumming's having preached a sermon of Mr. Channing, as charged in this first charge?

Testimony
on
1st Charge.

Wit. I do not know that he has circulated such a report at all. He has said something to me on that subject of his own knowledge. The place was my study; the time, when he returned from the installation at Milton; the substance, that Mr. Cumming had preached Mr. Channing's sermon, at Milton, throughout, except the close, a prayer, about which he was uncertain. He told me, on being enquired of, that he had made the communication to some minister. I do not recollect who. He asked my advice on this subject, which was, not to say any thing concerning it, except, if he felt it his duty, to any member of presbytery.

Cross Examination.

Def. Did not Mr. Chester, at the time he stated to you on his way from Milton to Albany, that Mr. Cumming had preached Mr. Channing's sermon, substantially repeat the introduction and several other passages which he said were in Mr. Channing's sermon?

Wit. He did.

Def. Have you since seen Mr. Channing's sermon, and, if you have, did it not contain what Mr. Chester had told you it did?

Wit. I have seen it. It did; and one thing with regard to which Mr. Chester doubted, viz. the prayer, which I found in the sermon.

Def. Do you know whether the common fame of Mr. Cumming's plagiarism has a

Mr. Chester's Trial. foundation in truth, and if so, what is all you know on the subject ?

Testimony
on
1st Charge.

Wit. I do not feel at liberty to answer.

Def. Did not Mr. Cumming assert, before the confidential committee, that Mr. Chester admitted at the interview with I. Hutton and U. Marvin, that the Milton sermon contained many things, or some things, that he had never heard before, or since ; and that he could prove that Mr. Chester admitted this, by two witnesses ?

Wit. He did assert it.

Examination of Dr. Hosack, sworn on the part of the prosecution

Witness knew nothing concerning the first charge.

Cross Examination.

Def. Did not Mr. Cumming assert before the committee on Mr. Winne's resolution, that Mr. Chester had admitted at the interview with Mr. Hutton and Mr. Marvin, that the Milton sermon contained many things, or some things that he had never heard before or since, and that he could prove that Mr. Chester admitted this, by two witnesses ?

Wit. I cannot be particular as to the words ; but that is the substance.

Examination of I. Hutton, sworn on the part of the prosecution.

Com. Do you know any thing of the Rev. John Chester's having industriously circulated a report of the Rev. Hooper Cumming's having preached a sermon of the Rev. Mr. Channing, as charged in the first charge ?

Wit. I do not.

Com. What did Mr. Cumming say to Mr. Chester, at the interview at your house, relative to the Milton sermon ; and what did

Mr. Chester say to Mr. Cumming on the same subject ?

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Wit. Mr. Cumming said, brother Chester, I understand that you have told in Schenectady that I have preached Mr. Channing's sermon at Milton ; and I think you ought to have told it to me. Mr. Chester said he thought the offence of that nature, that it did not require a private communication. Mr. Cumming said something that implied a denial of having preached Mr. Channing's sermon ; Mr. Chester asked Mr. Cumming if he pretended to deny having preached that sermon at Milton ; Mr. Cumming neither denied it nor confessed it ; Mr. Chester expressed regret of this affair, expressing his friendship to him when he joined this presbytery.

Com. Who were present at that interview ?

Wit. Mr. Marvin, Mr. Chester, Mr. Cumming, and none else.

Def. Did not Mr. Chester maintain thro'out the interview, in your presence and Mr. Marvin's, that the entire sermon preached by Mr. Cumming at Milton, was from Mr. Channing's, in thought, arrangement, and expression ?

Wit. That was the fact. He did maintain it ; and though he could not vouch for " ifs" or " ands," Mr. Chester said it was an exact copy of the sermon, with an exception, whether in the introduction or application, I do not recollect.

Def. Did Mr. Chester admit, during that interview, that the introduction of Mr. Cumming's sermon was not the same as Mr. Channing's, and that Mr. Cumming's sermon contained many things, or some things, that he had never heard before or since ?

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Wit. I heard nothing of that kind.

Def. Did Mr. Chester acknowledge at that interview, that he had been mistaken, or imprudent in asserting that Mr. Cumming's sermon was the same as Mr. Channing's, and that he would contradict the report?

Wit. I never heard that asserted.

Def. Did not Mr. Cumming declare, that he had made up his mind, henceforth to throw himself upon his own resources, and no longer make the use he had done of other people's sermons? And was this determination what he wished Mr. Chester, Mr. Marvin, and yourself to state, whenever you had an opportunity?

Wit. That was the substance.

Mr. Cum-
ming com-
plains of
the pro-
ceedings.

As Mr. Hutton was dismissed, Mr. Cumming appeared in presbytery and stated, that he had been unavoidably prevented from appearing sooner. That he supposed presbytery were sitting with closed doors. That he had been providentially informed that they were suffering his character to be publickly assailed, and he had come to claim his seat as a member, and to demand that the proceedings be arrested, and that the moderator give him a statement of all that had been done since the opening of presbytery until that time.

The moderator declined doing *this* himself, but decided that the clerk should read, to Mr. Cumming, the testimony taken.

Determin-
ation of
the Court.

This decision was objected to on the ground, that Mr. Cumming was himself cited as a witness, and could not, according to the constitution, hear the previous testimony, until he had himself been sworn. The objection was deemed insurmountable by the moderator, who therefore reversed his decision, giv-

ing it, however, as his opinion that the request of Mr. Cumming ought to be granted as soon as it could be constitutionally done.

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ter's Trial.

1st Charge.

Mr. Cumming then stated that he ought to be forthwith called as a witness. Here the moderator interrupted Mr. Cumming, to remark, that as presbytery were now sitting juridically, all debate was prohibited by the rules of order previously adopted, except at an interlocutory meeting. Considering however Mr. Cumming's peculiar situation, it was his opinion that he should be allowed to proceed, and he hoped the court would acquiesce in that opinion. Mr. Cumming proceeded to state, that it was very important to his character, to be present during Mr. Marvin's examination; that he had not had opportunity of cross-examining the preceding witnesses, and wished, in the case of Mr. Marvin, to avail himself of that privilege.

Mr. Hutton on the part of the committee for conducting the prosecution, stated, that in arranging the witnesses, whose names had been furnished them in this cause, they had placed Doct. Nott first, because he was moderator; Doct. Hosack next, because he was a member of presbytery; that his own name had been placed next, because he was on the committee for conducting the prosecution; and that Mr. Marvin had been placed next, because they were present together at the interview alluded to in the prosecution; and it was supposed, that their testimony would be better understood, if they were examined in succession. Next to Mr. Marvin, they had placed Mr. Cumming, making him the fifth witness, instead of the ninth, as he stood in the list of witnesses, furnished by Messrs. Eaton, Graham and Lucas, Mr. Cumming's

Reasons
why Mr.
Cumming
cannot be
called as a
witness be-
fore his
turn.

Mr. Ches-
ter's Trial.

1st Charge.

commissioners. He could have wished, that Mr Cumming should have been present at the opening of the trial. He knew no reason why he had not been; he supposed, at the time, Mr. Cumming remained absent out of delicacy; but, whatever the cause might have been, the committee had done nothing to delay his appearance in presbytery.

A motion was then made, by a member of the court, that Mr. Cumming be (in place of Mr. Marvin) forthwith called as a witness.

Mr. Chester objected to the admission of Mr. Cumming, in the words following:

The accus-
ed-objects
to Mr.
Cumming,
as an in-
terested
witness.

"I feel myself constrained to object to the admission of Mr. Cumming, as a witness. My objection lies against his competency. He has a direct and palpable interest in the issue of this investigation. My acquittal is his condemnation, and your record is the best testimony that can be adduced against him. If he shall be admitted to testify, he becomes not only a witness against me, but for himself. It is virtually his cause. His interest is of the deepest personal character."

In connection with this objection, an ecclesiastical authority was read in the words following :

"Accusers, persons of infamous character, at enmity with the accused, under censure, or process for censure, who expect, directly or indirectly, to reap any temporal advantage, or to avoid any temporal disadvantage, by giving testimony, cannot be admitted as witnesses, either for or against an offender. On any of these grounds, he has a right to challenge a witness, and the judicatory is candidly to hear and to decide on his exceptions."

The moderator stated, that he should re-

gret to have Mr. Cumming's testimony excluded, on the ground of incompetency, as made out by Mr. Chester, *that his own acquittal would be Mr. Cumming's condemnation.*

Mr. Chester's Trial.

1st Charge.

Opinion of the Moderator.

Mr. Cumming was, indeed, charged in this court for plagiarism, and to be *hereafter* tried. Mr. Chester was *now* on trial, for slanderer Mr. Cumming; for having reported that he was, in a particular instance, guilty of plagiarism. Mr. Chester has plead, that he should give the truth in evidence; which plea might indeed, (by putting at issue an act of Mr. Cumming, for which he was held to trial) give him an interest in the issue of this cause.

Still, however, (laying that charge out of the account, and also the third charge, in the bringing of which Mr. Cumming might have taken an agency, that would render his competency doubtful) there was yet another charge against Mr. Chester, in the issue of which Mr. Cumming's interest was not of that kind, that necessarily rendered him incompetent.

Mr. Cumming had not been charged in this court, with intemperance. Mr. Chester was now under trial for slanderer him in that respect; but the public and not Mr. Cumming, was the prosecutor on record. In strictness of law, therefore, so far as interest was concerned, he was not convinced that Mr. Cumming might not, on that charge, be admitted. On the whole, the moderator wished the taking of Mr. Marvin's testimony, together with the question of Mr. Cumming's competency, might be postponed for further consideration.

The postponement suggested, not being agreed to, the moderator said he should wave, for the present, deciding how far the objection of Mr. Chester, to the competency of Mr.

Mr. Ches-
ter's Trial

1st Charge.

Moderator's opinion.

Cumming, ought to be sustained, in the hope that the objection itself, might be withdrawn.

Considering, however, the facts within his own knowledge, and the testimony which, if the question could have been postponed, it was intended, previously to its decision, to have presented to the court, there was an objection, in his own breast, to the administering of an oath to Mr. Cumming, which he believed it to be his duty to disclose. The objection was this: he doubted his sanity. He did not mean to insinuate, that he believed him uniformly deranged, but it was his prevailing belief, that he was occasionally, and at present, partially so.

He was aware of the responsibility he took, in giving this intimation, at this time. He did not doubt, however, that it would ultimately be believed, to have been both probable and charitable. In the mean time, he did not wish the court, (if they saw nothing in Mr. Cumming, to confirm the opinion of the moderator,) to be governed by it. Having made the suggestion, he had satisfied his conscience.

Mr. Chester's objections sustained.

The objection of Mr. Chester being renewed, was sustained; and Mr. Cumming's testimony was rejected, by a vote of presbytery, on the ground of incompetency.

Examination of Mr. Marvin, sworn on the part of the prosecution.

Com. Do you know any thing of the Rev. John Chester's having industriously circulated a report, of the Rev. Hooper Cumming having preached a sermon of Mr. Channing's, as charged in this first charge?

Wit. I don't know that I ever heard him name it.

Com. What did Mr. Cumming say to Mr.

Chester, at the interview at Mr. Hutton's, relative to the Milton sermon, and what did Mr. Chester say to Mr. Cumming on the same subject ?

Mr. Chester's Trial.

1st Charge.

Testimony

Wit. Mr. Cumming said, I understand you said, I preached Mr. Channing's sermon at Milton. Mr. Chester said, I did say so. Mr. Cumming says, do you say I did it verbatim ? Mr. Chester said, as nearly as I can recollect, for I have a very great reason to know that sermon.

Mr. Cumming. Did not Mr. Chester say to Mr. Cumming, at the interview at Mr. Hutton's, either that there were some, or several, or many things in the discourse preached at Milton, which he had never before nor since read or heard ?

Wit. I never heard any such conversation.

Cum. Are you sure, perfectly sure of that ?

Wit. I never heard any such thing, to my knowledge.

Def. Did Mr. Chester acknowledge, at that interview, that he had been mistaken, or imprudent in asserting that Mr. Cumming's sermon was the same as Mr. Channing's, and that he would contradict the report ?

Wit. I never heard any such thing.

Examination of Mr. Backus, sworn on the part of the prosecution.

Com. Do you know any thing of Mr. Chester's having industriously circulated a report, of the Rev. H. Cumming's having preached a sermon of Mr. Channing, as charged in this first charge ?

Wit. I do not. I heard him say that Mr. Cumming preached Mr. Channing's sermon at Milton ; I believe subsequent to the interview at Mr. Hutton's house.

Mr. Ches-
ter's Trial.

1st Charge.

Testimony.

Examination of Mr. Winne, sworn on the part of the prosecution.

Com. Do you know any thing of the Rev. John Chester having industriously circulated a report, of the Rev. Hooper Cumming's having preached a sermon of Mr. Channing's, as charged in this first charge?

Wit. I do not. He did tell me that he did hear Mr. Cumming preach Mr. Channing's sermon at Milton, as nearly as he could recollect.

Examination of Mr. Boardman, sworn on the part of the prosecution.

Com. Do you know any thing of the Rev. John Chester's having industriously circulated a report, of the Rev. Mr. Cumming's having preached a sermon of Mr. Channing's, as charged in this first charge?

Wit. I do not. I heard him say in his study, that Mr. Cumming had preached Mr. Channing's sermon at Milton, and that he had the sermon in print.

Cross Examination.

Def. Did you feel that it was a confidential communication?

Wit. I did.

Examination of Mark Tucker, sworn on the part of the prosecution.*

Com. Do you know that the Rev. John Chester, has industriously circulated a report, of Mr. Cumming's having preached a sermon

* When Mr. Tucker was called, the question of his competency was suggested by a member of the court, he being also, as well as Mr. Cumming, under process for trial. The moderator said, if Mr. Tucker had any interest in the cause, it was to exculpate himself, in anticipation, by inculpating Mr. Chester. If, therefore, the objection was made, it ought to be considered, Mr. Chester made no objection.

of Mr. Channing's, as charged in this first charge?

Mr. Chester's Trial.

1st Charge.

Testimony:

Wit. No, sir.

Com. Did Mr. Chester tell you of his own knowledge, any thing concerning Mr. Cumming's having preached Mr. Channing's sermon at Milton; if so, when, where, and what did he tell you?

Wit. He told me, that the sermon Mr. Cumming preached, was, in his opinion, Mr. Channing's sermon. This was before we reached Schenectady, on our way from the installation at Milton.

Cross Examination.

Def. Did you hear Mr. Cumming preach at Milton?

Wit. I did.

Def. Did you ever see that sermon in print; and if so, who was the author?

Wit. { 1st Clause. I did.

{ 2d Clause. Mr. Channing.

Examination of Hon. Smith Thompson, sworn on the part of the prosecution.

Hon. Smith Thompson's testimony.

Com. Do you know any thing of the Rev. John Chester's having industriously circulated a report, of the Rev. Hooper Cumming's having preached a sermon of Mr. Channing's, as charged in this first charge?

Wit. I never, to my recollection, heard Mr. Chester say a syllable on the subject.

Examination of Chancellor Kent, sworn on the part of the prosecution.

Chancellor Kent's testimony.

Com. Do you know any thing of this first charge; if so, what do you know?

Wit. I believe I have heard Mr. Chester say, that Mr. Cumming did preach Mr. Channing's sermon at Milton?

Mr. Ches-
ter's Trial.

Cross Examination.

Def. Under what circumstances was this
1st Charge. assertion made ?

Wit. I don't recollect the particular circum-
Testimony. stances.

C. R. Web- Examination of C. R. Webster, sworn on
ser's testi- the part of the prosecution.
mony.

Com. Do you know any thing concerning
this first charge ; and if so, what do you know ?

Wit. I know nothing as coming from Mr.
Chester.

Th. V. W. Examination of Th. V. W. Graham, sworn
Graham's on the part of the prosecution.
testimony.

Com. Do you know any thing concerning
this first charge ; and if so, what do you know ?

Wit. I know nothing.

Mr. John- Examination of Mr. Johnson, sworn on the
son's testi- part of the prosecution.
mony.

Com. Do you know that the Rev. John
Chester has industriously circulated a report,
of the Rev. Hooper Cumming having preach-
ed a sermon of Mr. Channing, at Milton, as
charged in this first charge ?

Wit. I do not.

Com. Did Mr. Chester tell you of his own
knowledge, any thing concerning the sermon
Mr. Cumming preached at Milton ; if so,
when, where, and what did he tell you ?

Wit. I don't recollect.

Major I. Examination of Major I. Smith, sworn on
Smith's tes- the part of the prosecution.
timony.

Com. Do you know any thing concerning
this first charge ; if so, what do you know ?

Wit. No, sir.

Mr. Cumming then moved that Major
Smith be permitted to state, any thing he had
heard Mr. Chester say, relative to Mr. Cum-
ming's plagiarism. This motion was object-
ed to. As, however, what Mr. Chester had

said, might go to show his prevailing temper toward Mr. Cumming, the moderator thought it might be heard. The objection was therefore withdrawn.

Mr. Chester's Trial.

1st Charge.

Testimony.

Mr. Cumming. Have you heard Mr. Chester say any thing prejudicial to my moral character, touching either of the points at issue ; if so, when, where, and what ?

Wit. No. What I heard Mr. Chester say, was in reference to the Toplady sermon, at Doct. Willard's. Some one appealed to Mr. Chester, and asked whether he supposed there was any doubt on that subject. He considered there was none ; and when asked if he considered it a crime, he replied, the same as if any person should take papers from his desk.

Cross Examination.

Def. Was not my opinion hypothetically stated ?

Wit. It was.

Examination of Doct. Willard, sworn on the part of the prosecution.

Doct. Willard's testimony.

Com. Do you know any thing concerning the first charge ?

Wit. I know nothing.

Examination of Mr. Eights, sworn on the part of the prosecution.

Mr. Eights' testimony.

Com. Do you know any thing concerning this first charge ?

Wit. I do not.

Examination of Mr. Bulkley, sworn on the part of the prosecution.

Mr. Bulkley's testimony.

Com. Do you know any thing of the Rev. John Chester, having industriously circulated a report of the Rev. Hooper Cumming having preached a sermon of Mr. Channing's, as charged in this first charge ?

Wit. I do not. He did tell me at his study,

Mr. Chester's Trial. that Mr. Cumming did preach Mr. Channing's sermon.

1st Charge.

Cross Examination.

Testimony.

Def. Was not my communication respecting the sermon, confidential?

Wit. It was.

Mr. Warren's testimony.

Examination of Mr. Warren, sworn on the part of the prosecution.

Com. Do you know any thing concerning this first charge; if so, what do you know?

Wit. I don't know as to that particular sermon; the conversation was on Mr. Cumming's preaching other people's sermons, generally.

Mr. Cumming. Did you ever hear Mr. Chester stile Mr. Cumming's conduct, as relating to either of the points at issue, *infamous*?

Wit. I do not distinctly recollect the word *infamous*.

Mr. Cum. What did you hear Mr. Chester say, concerning Mr. Cumming's plagiarism?

To this Mr. Chester objected.

As the answer might go to show the feelings of Mr. Chester, towards Mr. Cumming, the moderator was rather in favour of its being put. After which, Mr. Chester withdrew his objection, and put the question himself.

Mr. Chester. What did you ever hear Mr. Chester say, concerning Mr. Cumming's plagiarism?

Wit. The conversation was at Schenectady, at Mr. Givens': when some one asked, if it would not have been more christian, if those reports were true, for Mr. Chester to have told Mr. Cumming. Mr. Chester said, as Mr. Cumming made no bones in preaching other people's sermons, he should make no bones in making it public. Mr. Chester observed further, that he considered Mr. Cumming's character, in that respect, so notorious,

that he did not consider it his duty, nor the duty of any one else, to keep it private. I think this was on the next morning after Mr. Winne's resolution had been handed to the presbytery. This was a general conversation.

Mr. Chester's Trial.

1st Charge.

Testimony.

Mr. Cum. Did the conversation arise in consequence of the subject having been bro't up in presbytery?

Wit. I can't say, that I was in the room when it commenced.

Mr. Cum. Did Mr. Chester begin the conversation?

Wit. I can't tell; I think not.

Mr. Cum. Did not Mr. Chester speak of Mr. Cumming, in reference to alledged plagiarism, while in conversation with you and others, at Schenectady, in a manner which indicated hostility towards Mr. Cumming; if so, what did he say?

Wit. He said nothing more than what I previously said, in answer to the former questions.

Mr. Cum. Did Mr. Chester say any thing relative to pillaging a piece of broad cloth; if so, what did he say?

Wit. Not in my hearing.

Cross Examination.

Def. Did you ever hear of Mr. Cumming's plagiarism, before the conversation at Mr. Givens'?

Wit. Yes, sir.

Def. Was not Mr. Cumming's plagiarism notorious, before this conversation?

Wit. I did not conceive it so; it was frequently talked of, I know.

Examination of Gilbert Stewart, sworn on the part of the prosecution.

Mr. Stewart's testimony.

Com. Do you know any thing concerning this first charge?

Mr. Ches-
ter's Trial.

1st Charge.
Testimony.

I.T.B.Gra-
ham's testi-
mony.

Wit. I don't know any thing.

Examination of Mr. I. T. B. Graham,

sworn on the part of the defendant.

Def. Did you not, on Tuesday, the first day of the session of the presbytery in Schenectady, in February last, present to the presbytery of Albany, a memorial, in which you spoke respectfully of the Rev. John Chester?

Wit. I did, sir..

Def. What transpired between Tuesday and Friday, that induced you to sign an information against the Rev. John Chester, of whom you had spoken respectfully on the Tuesday preceding?

Wit. Common rumour, that Mr. Chester had been engaged, in industriously circulating reports against Mr. Cumming.

Def. Did you hear these rumours before, or after signing the memorial?

Wit. Both before and after.

Def. When was it finally settled, and by whom, that an information against Mr. Chester, should be presented?

Wit. It was settled between us, the commissioners, on the morning of its presentation to presbytery, at Schenectady. Mr. Cumming had no agency in the business: it was several members of the congregation, that pressed upon us.

Def. Did you understand, that any of the third presbyterian congregation of Albany, had any deliberations, or gave any advice on the subject of my presentment; if so, who informed you of it, and what was the amount of the conversation?

Wit. There were certain members of the congregation, that advised it.

Def. Who first informed you, that Mr. Chester had stated before the committee,

on Mr. Winne's resolution, in Schenectady, what was not true, relative to what Mr. Marvin had told him, which has since been the ground of an additional charge of falsehood?

Mr. Chester's Trial.

1st Charge.

Testimony.

Wit. I am uncertain.

Cross Examination.

Mr. Cum. On what was the compliment passed upon Mr. Chester, in the first memorial, predicated?

Wit. I believe it was in consequence of his assisting in moderating the call, and his professions of friendship to the third congregation, in relation to the settlement of Mr. Cumming, as their pastor.

Mr. Cum. Why did you alter your mind respecting Mr. Chester?

Wit. It was in consequence of the course of proceeding he took in presbytery.

Examination of Mr. Lucas, sworn on the part of the defendant.

Mr. Lucas' testimony.

About the first of January I learnt that Mr. Marvin and Cumming had been at Mr. Duncan's house. Anxious to know the object of their call, Messrs. Duncan and Lucas called on Mr. Marvin, the same evening. Mr. Marvin said the object of the visit was, that the conversation at Mr. Hutton's the same day, should be related to us. That Mr. Cumming requested Mr. Marvin to relate it to us, as he could not see us. Mr. Marvin said, the subject of Mr. Cumming's preaching a sermon at Milton came up; that Mr. Cumming asked Mr. Chester if he had told that Mr. Cumming had preached Mr. Channing's sermon at Milton. Mr. Chester replied, do you deny having preached it? Mr. Cumming said, that he had read various authors, among them Mr. Channing; that he then arranged his ideas and preached a sermon. Mr. Marvin stated, that Mr. Cumming said, what-

Mr. Chester's Trial.

1st Charge.

Testimony.

The accused claims to read minutes of the Jersey presbytery.

He is permitted.

Minutes of Jersey presbytery read in evidence.

ever I had in that sermon, you know better than I do. Mr. Chester said, he considered the greater part of it to be that sermon.

The defendant produced the records of the presbytery of Jersey, certified by the proper officer, and claimed to read the same in evidence.

The moderator said, he had not understood that those records were to be introduced as evidence in this cause. The defendant replied, that he had cited them, and notified the committee, on the part of the prosecution, of the fact. And that he claimed to read the same in evidence, to make out his plea, to wit: "That such was the aggravation of Mr. Cumming's offence at Milton, from antecedent offences, confessions, and promises, that it was incumbent on me, as a christian, and a minister, to assert what I did assert relating to Mr. Cumming's having preached Mr. Channing's sermon." It was therefore decided by the court, that the defendant should be allowed to read the record which he had produced in evidence.

The moderator said, it was not competent, to the defended, to make any selection. If any part of the record was read, the whole of it must be read, or the court would not be able to judge either of the relevancy, or the weight of the evidence it contained.

Presbytery of JERSEY, at Newark, Thursday, April 29th, 1813.

"Mr. Hillyer stated to the presbytery, that common fame charges a minister of this body with a course of deliberate falsehood; whereupon, *Resolved*, that Mr. Hillyer, Mr. Williams, and Mr. Armstrong, Ministers, and Mr. Benjamin Cory, and Mr. Jacob Bennet, Elders, be a committee to inquire into the nature of the rumours, and report to the presbytery."

A true extract from the minutes.

THOMAS PICTON.

Presbytery of JERSEY, at Orange, Wednesday, June 9th, 1813.

Mr. Chester's Trial.

The committee appointed by presbytery of Jersey, on the representation of Mr. Hillyer, to inquire into the source and nature of a report now circulating, which charges one of the ministers in the said presbytery, with being guilty of deliberate falsehood, met according to appointment, on Thursday, the 29th of April, 1813. Present, Mr. Hillyer, Mr. Williams, and Mr. Armstrong, Ministers, and Mr. Benjamin Cory, and Mr. Jacob Bonnel, Elders.

1st Charge.

Minutes of Jersey presbytery read in evidence.

Mr. Hillyer was chosen chairman, and Mr. Armstrong, clerk.

After Mr. Hillyer had stated to the committee, the occasion and grounds of his asking for the appointment of this committee, it was agreed that the committee should meet on Monday, the 10th of May next, at 3 o'clock, P. M. at Mr. Williams' in Springfield, to attend to this matter, and the chairman was directed to request the Rev. Mr. Spring, of New-York, the Rev. Mr. Richards, the Rev. Mr. Whelpley, the Rev. Mr. Cumming, and Mr. Joseph C. Hornblower, and Mr. John R. Crane, of Newark, to attend at that time and place, that the committee may have opportunity to converse with them on that subject.

"The clerk was directed to furnish an attested copy of these minutes, to the person whose character is implicated in the above-named reports.

(Signed by)

A. ARMSTRONG, Clerk.

Springfield, May 10th, 1813, 3 o'clock, P. M.

The committee met according to agreement, and began with prayer, all the members being present.

The committee conversed with the Rev. Mr. Richards, the Rev. Mr. Whelpley, the Rev. Mr. Cumming, Mr. John R. Crane, and Mr. Joseph C. Hornblower, on the subject for the investigation of which they were appointed; and on the issue, there appeared reason to believe, that the Rev. Hooper Cumming, a member of the presbytery of Jersey, has, in repeated instances, been guilty of deliberate falsehood, in which he has persisted with aggravating circumstances of guilt: and although Mr. Cumming, when the committee came to converse with him, acknowledged, and seemed deeply to lament his sin, in some of the instances which had been mentioned to the committee; yet, as there were other instances in which there appeared reason to fear he had been equally guilty: and, as the committee were in-

Mr. Ches-
ter's Trial.

1st Charge.

Minutes of
Jersey
presbytery
read in ev-
idence.

formed, that reports do prevail, and have considerable currency, in Newark and New-York, and in some other places, imputing to Mr. Cumming, a course of prevarication and falsehood concerning the making use of other men's compositions in his sermons, and with contradictory sayings about his purposing to leave his present charge in Newark, and with prevarication and falsehood in the business of receiving Dr. Ward, from Bloomfield, to be a member of his church ; and in replying to a charge of his having said, that he never had supposed Mr. David D. Crane to be possessed of true religion : the committee considering the heinous nature of the crimes thus imputed to him ; the circumstances of aggravation said to have attended them, and the extent to which the ministerial character and the cause of religion are affected by these things, were unanimously of opinion that the presbytery ought to be called together as soon as practicable, and this whole business laid before them for their consideration and decision.

In bringing this matter before the presbytery, the committee beg leave to refer them, for more particular information, and for evidence, to the following persons, viz. the Rev. Mr. Spring, of New-York ; the Rev. Mr. Richards, of Newark ; the Rev. Mr. Guildersleeve, of Bloomfield ; the Rev. Mr. Williams, of Springfield ; Mr. John R. Crane, Mr. Joseph C. Hornblower, Mr. Stephen Hays, jun. the wife of Mr. Alpheus Hughes, and Mrs. Skillman, of Newark.

The above is respectfully submitted, by order of the committee.

(Signed.)

ASA HILLYER, *Chairman.*

The presbytery, after deliberately considering the above report, appointed Mr. Armstrong, Mr. Picton, and Mr. Bonnel, a committee to make out a statement of the charges therein implied.

The committee appointed to make out a statement of the charges against the Rev. Hooper Cumming, report the following, viz.

I. That he has been guilty of a course of prevarication and falsehood, concerning his making use of other men's compositions in his sermons.

Witnesses. Rev. Gardner Spring, Rev. James Richards, Rev. Gershom Williams, Rev. Samuel Whelpley, Mr. Joseph C. Hornblower, and Mr. John R. Crane.

II. That he has been guilty of contradictory sayings about his purposing to leave his present charge in Newark.

Witnesses. Mrs. Skillman, Rev. Gershom Williams, Rev. Gardner Spring, and Rev. Stephen Thompson.

III. That he has been guilty of prevarication and falsehood, in the business of receiving Doct. John Ward, from Bloomfield, to be a member of his church.

Witnesses. Col. John Dodd, Rev. Cyrus Guildersleeve, Mr. Israel Crane, and Rev. James Richards.

IV. That he has been guilty of falsehood, in denying that he never supposed Mr. David D. Crane had any religion.

Witnesses. Mr. John R. Crane, and Mr. Alpheus Hughes.

V. That after having confessed his crime, in relation to the first article of these charges, and professed the deepest penitence, and the most solemn purpose of reformation, he did, the same week, in disregard of his professions, and promise of reformation, repeat his offence, in preaching other men's sermons, and representing them in private conversation, as his own.

Witnesses. Rev. Stephen Thompson, Rev. James Richards, Rev. Gardner Spring, and Rev. Geshom Williams.

(Signed)

AMZI STRONG, *Chairman.*

Orange, June 9th, 1813.

Resolved, That the above report be accepted, and that Mr. Cumming be prosecuted on the above charges.

Mr. Cumming, being present, and a copy of these charges put into his hands, was asked, whether he was now prepared to proceed to trial, to which he answered in the affirmative.

Mr. Cumming replied to each charge. But, though he acknowledged the truth of some of them, in part, and professed repentance, his answers were not deemed, upon the whole, satisfactory.

Adjourned to meet to-morrow morning.

THURSDAY MORNING.

Mr. Cumming asked and obtained leave to present his answer to the charges, in writing, which he read as follows, viz.

In regard to the *first* charge, I confess that I am in a high degree guilty. I desire to humble myself before my brethren, as well as before the Lord. I repent, and relying on divine grace, profess a solemn purpose of future and continued reformation.

As to the *second* charge, I have, no doubt, said things which, put together, have the appearance of contradiction. I exceedingly regret the circumstance. I had no idea, at the time, that I was departing from the truth. I hope that what has transpired on this subject, will henceforth be the means of teaching me peculiar circumspection.

Mr. Chester's Trial.

1st Charge.

Minutes of Jersey presbytery read in evidence.

Mr. Ches- In replying to the *third* charge, I acknowledge that,
 ter's Trial. in serving my friend Doct. Ward, I took some steps
 which were precipitate. I lament that I misunderstood
 the session of the church at Bloomfield, on an important
 point in that business, and that they misunderstood me.
 Meeting of The matter has been fully and amicably settled between
 Jersey us. The heat of my zeal deprived me of necessary
 presbytery caution. But upon a solemn and prayerful review of
 read in ev- the subject, I cannot charge myself with an intentional
 idence. departure from the truth.

As to the *fourth* charge, I deeply regret that I was too much disposed to conceal facts from the knowledge of Mr. John R. Crane, respecting what I had said of his father's religious character.

In replying to the *fifth* and last charge, I beg leave to state that my professions of repentance for my past sin, and my promise of no longer making so free use of the labors of others, in my future composition of sermons, were sincere. But I much lament that in consequence of peculiarly embarrassing circumstances, I had with me, while at Connecticut-Farms and Springfield, but one sermon purely of my own composing. This I preached at the former place. And, as to the one delivered at Springfield, I had no doubt that I made remarks which were calculated to convey the idea, that this was also my own : in doing which I greatly sinned. I was very wrong in taking with me such a sermon as that which I preached at Springfield. I blame myself much for having preached it.

In reviewing my whole conduct on the occasion referred to, in the preceding charges, I have reason to adopt the language of the Psalmist, "O Lord, pardon my iniquity, for it is great." It is my fervent desire, and deliberate and fixed purpose, to manifest, to the end of my days, a humble, penitent temper of heart. O ! that I may take heed to my steps, lest I again fall ! O that the grace of the Divine Spirit may be sufficient for me.

In reply to some questions proposed to him, Mr. Cumming further acknowledged, in detail, that he had, in conversation with the Rev. Samuel Whelpley, falsified the truth, in denying that he used other men's compositions as his own ; that he had, in denying to Mr. John R. Crane that he had seen Mr. Simeon's skeletons, except in two instances, also falsified the truth ; that he had falsified the truth in making the same representation to Mr. Richards, and had further called God to witness for the truth of his representation ; that he had further falsified the truth, in, for some time, denying to Mr. Richards and Mr. Spring, the charge of

plagiarism ; that he had violated his promise in preaching a sermon taken from Toplady, directly after he had solemnly professed to Mr. Richards and Mr. Spring, his penitence, and engaged no more to preach other men's sermons ; and that he had also falsified the truth in denying to Mr. John R. Crane that he had said to Mrs. Hughes, that he was of opinion that Mr. Crane's father had no religion.

Mr. Chester's Trial.

1st Charge.

Minutes of Jersey presbytery read in evidence.

After Mr. Cumming had retired, the presbytery agreed that the way is now prepared to proceed to decide on the case.

The presbytery proceeded to take the question on each charge separately, when it was *Resolved*,

I. That the Rev. Hooper Cumming is, by his own confession, guilty of the *first* charge.

II. That, in view of his answer, it is inexpedient that the presbytery prosecute the *second* charge any further.

III. That in consideration of his acknowledgment and explanations, in his answer to the *third* charge, it is inexpedient to prosecute that any further.

IV. That, by his own confession, he is guilty of the *fourth* charge.

V. And that, also, by his own confession, he is guilty of the *fifth* charge.

After special prayer for divine direction, and mature deliberation, the presbytery *Resolved*,

That the Rev. Hooper Cumming be, and he hereby is suspended, from the exercise of the office of the gospel ministry, until the next stated meeting of presbytery.

The presbytery directed Mr. Cumming to confess his sin, and profess his repentance before his congregation, on the sabbath immediately preceding the next stated meeting of presbytery. Mr. Hillyer was appointed to attend on the occasion.

Mr. Cumming was called in, and the decision of presbytery read to him.

I certify that the foregoing is a full and correct transcript from the minutes of the presbytery of Jersey, on the case of the Rev. Hooper Cumming.

THOMAS PICTON,

Stated Clerk of Presbytery.

Westfield, June 15th, 1813.

All the testimony recorded under the **FIRST CHARGE**, having been read and considered, *the court UNANIMOUSLY decided*,

I. *That it has not been made out on the*

Mr. Ches-
ter's Trial.

1st Charge.

Judgment
thereon.

part of the prosecution, that the Rev. John Chester has industriously circulated, or that he has circulated at all, a report of the Rev. Hooper Cumming's preaching at Milton, on the 11th December, 1816, a sermon of the Rev. Mr. Channing, as it is charged in this charge.

II. That it has been made out, on the part of the defendant, that what he did say, of his own knowledge, and not as report, relative to the sermon preached by Mr. Cumming, at Milton, was true.

III. That inasmuch as preaching is a public act, and the discourse preached, an acknowledged subject of public conversation, and especially inasmuch as the defendant was in possession of the facts set forth in the records of the presbytery of Jersey, now read in evidence, he had an undoubted right to say what he did relative to the sermon preached at Milton, (the same being true) at the times and places, and to the persons, and under the circumstances in which he said it : and that the defence which he has set up and made out, is good and sufficient, amounting, alike in law and in equity, to a justification.

2d Charge.

SECOND CHARGE.

Common fame charges the Rev. John Chester with making, when in conversation with Mr. Mark Tucker, a charge of intoxication against the Rev. Hooper Cumming, at the house of U. Marvin ; and with falsehood in denying the same, when charged therewith, in the presence of U. Marvin and I. Hutton.

Dr. Nott's
Testimony.

Dr. Nott.

Com. Did you ever hear the Rev. John Chester make a charge of intoxication against the Rev. Hooper Cumming, as charged in

the second charge ; or, when charged therewith, did you ever hear him deny the same ?

Mr. Chester's Trial.

Wit. I never did.

2d Charge.

Com. Did you ever hear him say any thing relative to the report of the Rev. Hooper Cumming's intemperance at U. Marvin's, and, if so, what did you hear him say ?

Testimony.

Wit. I heard him say something on this subject ; at what time I do not know. He asked me if Mr. Marvin ought to communicate this to the session of the first church. I told him that he ought not to say any thing on the subject.

Mr. Hutton.

Com. Did you ever hear Mr. Chester make a charge of intoxication against the Rev. Hooper Cumming, as charged in this second charge ? Or, did you ever hear him, when charged therewith in your presence and Mr. U. Marvin's, deny the same ?

Mr. Hutton's Testimony.

Wit. I never did hear such a charge made by Mr. Chester. I heard Mr. Chester deny that he had said that Mr. Cumming was drunk ; but he did not deny that he had given Mr. Tucker to understand that Mr. Cumming was the worse for liquor.

Com. What was the precise question that Mr. Cumming put to Mr. Chester, at that interview, relative to what he had told Mr. Mark Tucker, concerning intemperance at Mr. Marvin's, and what was the precise answer of Mr. Chester ?

Wit. As nearly as I can recollect, Mr. Cumming said, that Mr. Chester had told Mr. Tucker that he was drunk at Mr. Marvin's. Mr. Chester said he had not told Mr. Tucker that Mr. Cumming was drunk ; but, if he inferred that from what he said, he did not know but that there was ground for it.

Mr. Ches-
ter's Trial.

2d Charge.

Testimony.

Cross Examination.

Def. Did not Mr. Cumming tell Mr. Chester, that Mr. Tucker told him, that Mr. Chester told Mr. Tucker, that Mr. U. Marvin told Mr. Chester, that Mr. Cumming was so drunk at Mr. Marvin's house, that he would not suffer him to go out?

Wit. He did.

Def. Did not Mr. Chester say, I never told Mr. Tucker that you was drunk; nor did I authorize him to mention what I told him; but, did not I add to this effect, that if Mr. Tucker felt at liberty to say any thing. he had a right to say, you was in an improper situation to go out?

Wit. That was the substance.

Def. Did I not maintain throughout, that Mr. Tucker had mistaken me in saying, that Mr. Cumming was drunk; but that it was true, that I conversed freely with him upon Mr. Cumming's intemperance?

Wit. Yes.

Mr. Marvin.

Mr. U.
Marvin's
Testimony

Com. Did you ever hear Mr. Chester make a charge of intoxication against the Reverend Hooper Cumming, as charged in this second charge? Or, did you ever hear him, when charged therewith, deny the same?

Wit. I never heard such a charge.

Com. When, where, and what did *you* tell the Rev. John Chester, concerning the intemperance of the Rev. Hooper Cumming?*

* Mr. Cumming enquired of the moderator, whether that was a proper question. He did not see that presbytery had any thing to do with what Mr. Marvin told Mr. Chester. Mr. Chester was charged with industriously circulating injurious reports against him, in a conversation with Mr. Tucker, What Mr. Marvin had

Wit. When, I cannot state exactly ; it was at Mr. Chester's room. I told him that I had satisfied myself with my own eyes, and the observation of the family, and some of Mr. Cumming's friends, that Mr. Cumming had made so free a use of ardent spirits, as not to be himself, or, out of his right mind.

Mr. Chester's Trial.

2d Charge.

Testimony

Com. What was the precise question Mr. Cumming asked you, at the interview at Mr. Hutton's, relative to his intemperance ; and what was your precise answer ?

Wit. He asked me, I think, did you ever see me drunk at your house, so that you held me from going out ? My answer was, I never saw you drunk at my house.

Com. Why did you not tell Mr. Cumming, at that interview, all that you had told Mr. Chester ?

Wit. I don't know that I can tell ; I was confused, and avoided it for the sake of further reflection ; I knew that I had never used the term, *drunk*.

Com. What was the precise question that Mr. Cumming put to Mr. Chester at that interview, relative to what he had told Mr. M. Tucker, concerning Mr. Cumming's intemperance at Mr. Marvin's, and what was the precise answer of Mr. Chester ?

Wit. I think he said, did you ever say to said to Mr. Chester, had nothing to do with the business.

The moderator replied, it is not with circulating a report, but *with making a charge*. Mr. Chester denies having made *any* charge himself, alleging that Mr. Marvin told him that he told Mr. Tucker, and that he gave, at the time, Mr. Marvin as his author, and unless presbytery ascertain what Mr. Marvin told Mr. Chester, they can, in no way, ascertain whether Mr. Chester told Mr. Tucker any thing *more, or worse than what Mr. Marvin had told him*. He therefore did not perceive that the question was out of order.

Mr. Ches-
ter's Trial.

2d Charge.

Testimony.

Mr. Tucker, that Mr. Marvin told you that I was drunk at his house? Mr. Chester said, I had such conversation with Mr. Tucker, at my room. How far Mr. Tucker was at liberty to make use of this discourse, I don't know.

Mr. Cum. Did you not say, at the interview at Mr. Hutton's, that you never told Mr. Chester that you had seen me intoxicated?

Wit. Not in those words, to my knowledge.

Mr. Cum. Are you sure that you can, with a safe conscience, at the day of judgment, say so?

Wit. Yes.

Mr. Cum. Did you not say, that if you had suspected Mr. Cumming of intemperance, you would have apprized him of the circumstance, and not told another person?

Wit. I don't think that I said such a word.

Mr. Cum. Are you sure that you can, with a safe conscience, at the day of judgment, say so?

Wit. Yes.

Mr. Cum. Did not Mr. Chester say, at Mr. Isaac Hutton's, on the third day of January, 1817, that you never told him that you saw me drunk at your house?

Wit. I don't recollect.

Mr. Cum. Did not Mr. Chester say that you never told him that I was so drunk at your house, as to make you afraid to permit me to leave your house?

Wit. Not at that time, to my knowledge.

Mr. Cum. Did you not acquit Mr. Cumming, by the tenor of your conversation at Mr. Hutton's, of every imputation on the ground of intemperance?

Wit. I do not think I said so much as I ought to have said.

Mr. Cum. Did not Mr. Chester declare, at the interview at Mr. Hutton's, that he never said any thing to Mr. Tucker, which warranted him in asserting that you had ever hinted to Mr. Chester, any suspicions on the subject of my being intemperate ?

Mr. Chester's Trial.

2d Charge.

Testimony.

Wit. No.

Mr. Cum. Are you perfectly sure of this ?

Wit. I am.

Cross Examination.

Def. Did not Mr. Cumming tell Mr. Chester at the interview, that Mr. Tucker told him, that Mr. Chester told Mr. Tucker, that Mr. Marvin told Mr. Chester that Mr. Cumming was so drunk at Mr. Marvin's house, that he would not suffer him to go out ?

Wit. Mr. Cumming said, Mr. Tucker had said that Mr. Chester told him that Mr. Marvin told Mr. Chester, that Mr. Cumming was so drunk at his house, that he held him by the coat, and would not let him go out.

Def. Did not Mr. Chester say, I never told Mr. Tucker that you was drunk ; nor did I authorize him to mention what I told him. But did I not add to this effect, that if Mr. Tucker felt at liberty to say any thing, he had a right to say that you was in an improper situation to go out ?

Wit. I have generally understood that.

Mr. Cumming stated that he had wished to cross-examine the witnesses, who were examined before he came into court.

The moderator decided that he should be allowed to do so.

The introduction of Mr. Duncan, as a witness, was called for by Mr. Cumming. Mr. Chester objected to his introduction, on the ground that his name had never before been given to him, as a witness in his own cause,

Mr. Cumming calls for testimony, which is objected to by the accused.

Mr. Ches-
ter's Trial.



2d Charge.

Testimony.

The Court
decides
that no
new wit-
ness can be
introduced
without
consent of
the accus-
ed.

The testi-
mony de-
sired is of a
nature to
change the
whole
course of
trial.

but in that of Mr. Tucker only, though by mistake he might have been cited in both.

Moderator. For what purpose is it wished to introduce Mr. Duncan ?

Mr. Cumming. To do away Mr. Marvin's testimony, by proving that he has contradicted himself, and sworn contrary to his own positive declaration.

The moderator decided that Mr. Chester's objection, being constitutional, was conclusive ; that new witnesses could be introduced only by his consent ; and, besides, it must be distinctly understood by the parties, if witnesses were to be introduced for the purpose stated, it would widen the field of enquiry, by presenting a new point before the court, to wit, *The credibility of Mr. Marvin*, whose testimony, if admitted to be credible, and allowed to stand good as to the fact of his telling Mr. Chester, might be deemed by him sufficient for his defence ; unless it shall hereafter be proved that Mr. Chester has, in the language of the specification now under consideration, himself, and without giving Mr. Marvin as the author, *made a charge of intoxication against the Rev. H. Cumming*, which Mr. Chester, in his pleadings, denies, and which has not, as yet, been made to appear. But if either the credibility of Mr. Marvin be destroyed, or if his testimony now on record, as to the fact of his having told Mr. Chester, be not allowed to stand good, then Mr. Chester himself will become responsible for *the truth* of what, in his pleadings, he has admitted, and, also, of what, in the course of the trial, may yet be proved, that he has told ; for if Mr. Marvin either did not tell Mr. Chester, or was not deserving of credit, though he did, the defence set up

would be unavailing. Whatever, therefore, lessens the credibility of Mr. Marvin, generally, or diminishes the probability of the fact of telling, which he has sworn to, increases the responsibility of Mr. Chester. And if Mr. Cumming had, and were to exercise the right of introducing additional testimony, either to sink the general credit, or to render doubtful the particular testimony on record, of the very witness on whose veracity alone the defence of Mr. Chester essentially depended, then, and by that act, Mr. Chester would acquire the right of introducing additional testimony, either to restore the credit of that witness generally, or to confirm the fact of the particular telling which he had sworn to ; or to establish, for his own defence, the truth itself of the matter told ; and for which, if the witness is not to be believed, and to the extent which he is not to be believed, Mr. Chester must himself be held by the court to be responsible.

Mr. Chester's Trial.
2d Charge.

If this new ground were taken, it might change the course of the trial, and the truth itself of the alleged intemperance at Mr. Marvin's, as well as the fact of telling, be put at issue.

Mr. Cumming replied that that was what he intended ; that since the enquiry had been commenced, he meant to have the whole truth brought out, and cause the sun to shine on that transaction.

Mr. Cumming insists.

The moderator said, if that was Mr. Cumming's determination, after what he had stated, he should not, if the parties consented, make any further objection.

The committee for the prosecution having consented, the moderator asked Mr. Chester whether he also consented. Mr. Chester re-

The accused consents.

Mr. Chester's Trial.

2d Charge.

Witness dismissed on other grounds.

Mr. E. F. Backus's testimony.

Mr. J. L. Winne's testimony.

plied, that he did ; and, waving his right, withdrew his objection to the introduction of Mr. Duncan.

Mr. Duncan was then called and sworn, when it was objected, by a member of the court, that he had been present when Mr. Marvin was examined.

Moderator. Was you present during the examination of Mr. Marvin ?

Witness. I was.

The witness was dismissed.

Mr. Backus.

Com. Did you ever hear Mr. Chester, make a charge of intoxication against the Rev. Hooper Cumming, as charged in this second charge ? Or, did you ever hear him, when charged therewith, in the presence of Mr. I. Hutton and U. Marvin, deny the same ?

Wit. I never heard him in the presence of Mr. Marvin.

Com. Has Mr. Chester ever told you any thing, as communicated to him by Mr. Marvin, relative to Mr. Cumming's intemperance ; if so, when and where, and what did he tell you ?

Wit. The time I do not recollect. He said Mr. Marvin told him that Mr. Cumming had been in such a situation, from the improper use of liquor, that he did not think proper to permit him to go into the street.

Com. What relation are you to Mr. Chester ?

Wit. Brother-in-law.

Com. Do you profess religion ?

Wit. Yes.

Mr. Winne.

Com. Did you ever hear Mr. Chester make, when in conversation with Mr. Mark Tucker, a charge of intoxication against the Rev.

Hooper Cumming, at the house of Mr. U. Marvin ? Or, did you ever hear him, when charged therewith, in the presence of Mr. U. Marvin and Mr. I. Hutton, deny the same ?

Mr. Chester's Trial,
2d Charge.
Testimony.

Wit. No, sir.

Com. Did you ever hear Mr. U. Marvin tell Mr. Chester, or tell in his presence, any thing concerning the Rev. Hooper Cumming's intemperance ; if so, when, where, and what did he tell him, or in his presence ?

Wit. Capt. Marvin did say in the session of the second church, before Mr. Chester, that he had seen Mr. Cumming disguised with liquor at his house.

Mr. Cum. How then could you consistently declare to Drs. Nott and Hosack, and Mr. M'Crea, in Schenectady, that you knew not with what common fame charged Mr. Cumming ?

Wit. I stated to that committee, that I knew nothing from my own personal knowledge.

Mr. Cum. Was not this the question proposed to you by that committee, With what does common fame charge Mr. Cumming ?

Wit. Not to my recollection.

Mr. Boardman.

Com. Did you ever hear Mr. U. Marvin tell Mr. Chester, or tell in his presence, any thing concerning the Rev. Hooper Cumming's intemperance ; if so, when, where, and what did he tell him, or in his presence ?

J. Boardman's testimony.

Wit. I heard Mr. Marvin, in Mr. Chester's study, say that Mr. Cumming had been disguised with liquor at Mr. Marvin's house ?

Com. Are you a member of Mr. Chester's session ?

Wit. Yes.

Mr. Ches-
ter's Trial.

2d Charge.

Mr Tuck-
er's testi-
mony.

Mr. Tucker.

Com. Did you ever hear the Rev. John Chester make, when in conversation with you, a charge of intoxication against the Rev. Hooper Cumming, as charged in this second charge ; or when charged therewith in the presence of Mr. I. Hutton, and U. Marvin, deny the same ?

Wit. No, sir.

Com. Did Mr. Chester tell you that Mr. Marvin told him any thing concerning Mr. Cumming's intemperance at his house ; if so, when, where, and what did he tell you ?

Wit. I do not recollect the time when. He said Mr. Marvin told him, that Mr. Cumming had been under the influence of spiritous liquor ; and so much so, that he considered it imprudent for him to leave his house.

Mr. Cum-
ming intro-
duces a re-
monstrance
from the
commis-
sioners of
3d church.

Mr. Cumming stated, that he held certain documents, presented him by the commissioners, and wished the same to be recorded.

The papers having been read, it was objected that the commissioners were not parties, or any way before presbytery ; nor had they any thing to do with the cause at issue.

The moderator observed, that though they were not, they were, in a certain sense, the agents of a respectable portion of the religious community ; and they had a right to their opinion, and a right to differ from the presbytery.

It might be that the presbytery were in error, particularly the moderator, and if he had given a wrong opinion, he would retract it, the moment he was convinced of it. And as it was possible he might have, it was his honest wish, for the sake of Mr. Cumming,

that as the moderator's opinion would become matter of record; that whatever Mr. Cumming, or his friends, might wish to record beside it, to counteract its supposed injurious effect, should also be recorded. Though the commissioners, as such, had no rights at issue. Mr. Cumming had rights, as a member of presbytery. If he moved the acting on those papers, it was the decision of the moderator that they should be acted on.

Whereupon, Mr. Cumming moved that the request contained in document N^o. 1. of the commissioners, be granted, which was again read, and is as follows :

“ The commissioners of the third presbyterian church of the city of Albany, present the following considerations to the presbytery. They have learned with deep regret, the course which has been adopted in the present investigation against Mr. Chester. Interrogatories in writing have been propounded to witnesses, adduced in support of the charges against Mr. Chester, in the forming of which the commissioners never have been consulted; interrogatories which have been formed by the aid and concurrence of Mr. Chester, and his counsel (as has been suggested to them) in manifest violation of the ordinary course of proceeding; and which interrogatories are by no means calculated to elicit the whole truth, but are, in many respects, imperfect, if not highly mischievous. The commissioners, therefore, remonstrate against such interrogatories, and they beg leave to substitute others, which will obviate the objection above alluded to. They also, firmly, but respectfully, remonstrate against the proceedings being, any longer, conducted or managed by the present managers, and they pray

Mr. Chester's Trial.

2d Charge.

Remonstrance of Commissioners of 3d church.

Mr. Ches-
ter's Trial.



2d Charge.

that the commissioners, by themselves, or by their counsel, may conduct and manage the said investigation.

*Isaac Lucas,
William Eaton,
J. T. B. Graham.*

Albany, April 9th, 1817."

Order ta-
ken there-
on.

Whereupon, *Resolved*, That the committee for conducting the trial of Messrs. Chester and Tucker, receive any interrogatories from Messrs. Eaton, Graham and Lucas, touching the points at issue, to be presented to the presbytery.

Mr. Cumming moved, that the request contained in document No. 2. of the commissioners be granted, which was again read, and is as follows :

Resolution
proposed
by the
above com-
missioners
thro' Mr.
Cumming.

" Whereas Mr. Richard Duncan was yesterday sworn, as a witness in support of the charges against Mr. Chester, and, after being so sworn, was not permitted to be examined, on the ground that he had been present in the presbytery, while another witness was under examination.

And *whereas*, however incorrect it might be for Mr. Duncan to have been so present, and however it might subject him to ecclesiastical censure, yet it could form no ground for disallowing his testimony.

Therefore, *Resolved*, That Mr. Duncan be now examined as a witness. *April 9th."*

In support of this motion, it was stated by Doct. Coe, that it was the usage, in other presbyteries, to do this.

Moderator's opin-
ion.

Whereupon the moderator said, that it was with regret that he dismissed Mr. Duncan, yesterday. After it had been settled, that he should be admitted, and also settled, (though contrary to his original opinion and advice)

that the whole truth of the report of intemperance at Mr. Marvin's, should be put at issue, all his decisions would, hereafter, be in favour of the developement of truth, let it affect whomsoever it would ; and he did not consider the article in the constitution imperative, particularly where the parties consented to the admission of the witness. He should, therefore, decide in favour of admitting him.

Mr. Chester's Trial.
2d Charge.

Mr. Cumming, also, in behalf of the commissioners, moved the following resolution :

“ Resolved, That the Rev. Mr. Chester and Mr. Tucker, and the managers of the charges against them, or either of them, be at liberty to introduce any witness to points which are now under discussion, provided this privilege do not extend to proof concerning new charges against Mr. Chester and Mr. Tucker.”

The moderator stated, that it was unnecessary to act on this resolution, as the question it brought up had already been settled, when Mr. Duncan was first called for as a witness ; and it was on record, that Mr. Chester waved his right to object to the introduction of new witnesses, and therefore the liberty contemplated by this resolution, was already in possession of the parties.

A Document in the words following :

“ Whereas the interests and feelings of a large and respectable Congregation, are deeply concerned in the present investigation—And whereas justice requires that the proceedings should be impartial, as well as it regards the reputation of the Rev. Mr. Cumming, as that of Mr. Chester—And whereas it appears that the present moderator, Doct. Nott, has expressed sentiments which strongly mark a state of hostility towards Mr. Cumming, and indicate a total

Further resolution proposed by the commissioners.

Mr. Ches-
ter's Trial.

2d Charge.

disregard of that christian benevolence and truth which adorn the ministry, especially by openly charging Mr Cumming in presbytery, with insanity."—Therefore, *Resolved*, as the sense of this presbytery, that Doct. Nott ought no longer to be moderator of this presbytery," was presented by Mr. Cumming, as he stated, at the request of Messrs. Lucas, Eaton, and Graham.

The moderator decided that the same be recorded.

Mr. Cumming again enquired, when he might cross-examine the witnesses whose testimony was taken when he was absent.

The moderator told him, at any moment when there was an opening, that the court was then occupied, and there were witnesses in waiting ; but that he should certainly have an opportunity of doing this, before the trial closed.

Examination of Mr. Duncan, sworn on the part of the prosecution.

Mr. R.
Duncan's
testimony.

On the third of January last, the Rev. H. Cumming and Mr. U. Marvin called at Mr. Duncan's house (as Mr. Duncan was informed by his family, himself not being at home at that time) and left a request for Mr. Duncan to call that evening at Mr. Marvin's. That accordingly in the evening Mr. Duncan and I. Lucas called at Mr. Marvin's, and there, after some conversation about the Rev. Mr. Cumming, he, the said Marvin, in presence of Mr. Duncan and I. Lucas, declared in positive and unqualified terms, that he had never seen the Rev. Mr. Cumming drunk at his house ; nor had he any reason to suspect him of being so, but he had been informed by people from Schenectady, and whom he must believe, that Mr. Cumming

made use of a quart of ardent spirits in his family, a day.

Mr. Chester's Trial.

Hon. Smith Thompson.

2d Charge.

Com. Do you know any thing concerning this second charge?

Testimony.

Wit. I never heard Mr. Chester say any thing on the subject.

Chancellor Kent.

Com. Do you know any thing concerning this second charge; if so, what do you know?

Wit. I know nothing.

C. R. Webster.

Com. Do you know any thing concerning this second charge; if so, what do you know?

Wit. I do not.

Mr. Graham.

Com. Do you know any thing of this second charge.

Wit. Nothing.

Major Smith.

Com. Do you know any thing concerning this second charge; if so, what do you know?

Wit. I know nothing

Doct. Willard.

Com. Do you know any thing concerning this second charge?

Wit. I do not.

Mr. Eights.

Com. Do you know any thing concerning this second charge?

Wit. I do not.

Mr. Bulkley.

[Witness knew nothing concerning the second charge.]

Com. Did you ever hear Mr. U. Marvin tell Mr. Chester, or tell in his presence, any thing concerning Mr. Cumming's intemperance? If so, when, where, and what did he tell him, or tell in his presence?

Mr. Ches-
ter's Trial.

2d Charge.

Testimony.

Wit. At the meeting of session, Mr. Marvin said that he had frequently seen Mr. Cumming under the influence of liquor; and when asked, if there was any doubt on the subject, he said that it would be evident from the smell of the liquor; and that this was done at his house, and that he witnessed it.

Com. Are you a member of Mr. Chester's session?

Wit. I am.

Cross Examination.

Def. Is Mr. Marvin a member of our session?

Wit. Yes.

Def. Was Mr. Marvin's communication confidential?

Wit. I considered it so.

Mr. Warren.

Com. Do you know any thing concerning this second charge; if so, what do you know?

Wit. I know nothing of my own knowledge; only from hear-say.

Gilbert Stewart.

Com. Do you know any thing concerning this second charge?

Wit. Nothing.

Captain
L. Bos-
worth's
testimony.

Capt. L. Bosworth was called on the part of the defendant. Mr. Cumming objected to him on the ground that his introduction would be unconstitutional, as he had not been cited, and notice thereof been given to the committee, at least ten days.

The moderator decided that Capt. Bosworth might be admitted.

Mr. Cumming appealed from the decision of the chair, and the question was deferred until an interlocutory meeting.

Examination of Miss Hannah Peck, sworn Mr. Ches-
ter's Trial.
on the part of the defendant.

Def. Has the Rev. Hooper Cumming been 2d Charge.
frequently at Mr. U. Marvin's, as a guest ? Testimony.

Wit. He has, sir.

Def. In what relation do you stand to Mr. Miss H.
Peck's tes-
timony.
Marvin ?

Wit. His sister-in-law.

Def. Do you live in his family ?

Wit. Yes, sir.

Def. Have you ever seen the Rev. Hooper
Cumming drink ardent spirits intemperately,
and in such quantities, that he did not appear
to be himself ?

Wit. Yes, sir.

Def. Have you, or have you not ever put
liquor beyond his reach, lest he should drink
so much as to make him intemperate, and
improper to be seen ?

Wit. Yes, sir, I have ; and afterwards have
been obliged to fetch it at his call.

Def. Have you, or have you not, frequently
seen Mr. Cumming in such a state in the
afternoon and evening, from the use of liquor,
that he appeared like a different man from
what he did, when he first got up, and in the
first part of the day.

Wit. Yes sir, I have.

Def. Have you ever conversed with Mr.
Marvin and your sisters on the subject of
Mr. Cumming's intemperance ?

Wit. Yes, sir, I have frequently.

Examination of Miss Lucretia Peck, sworn Miss L.
Peck's tes-
timony.
on the part of the defendant.

Def. In what relation do you stand to Mr.
Marvin ?

Wit. His sister-in-law.

Def. Do you live in his house ?

Wit. Yes, sir.

Mr. Ches-
ter's Trial.

2d Charge.

Testimony

Def. Has the Rev. Hooper Cumming been frequently at Mr. U. Marvin's house as a guest ?

Wit. Yes, sir.

Def. Have you ever seen the Rev. Hooper Cumming drink ardent spirits intemperately, and in such quantities, that he did not appear to be himself ?

Wit. Yes, sir.

Def. Have you ever conversed with Mr. U. Marvin and your sisters, on the subject of Mr. Cumming's intemperance ?

Wit. A number of times.

Cross Examination.

Mr. Cum. Have not these same questions been made known to you before you came to this house ?

Wit. No, sir.

Mr. Cum. Have you not been urged to appear before this presbytery : and by whom ?

Wit. I have not been.

Mr. Cum. Did not Mr. Chester urge you ?

Wit. No, sir.

Mr. Cum. Did not Mr. U. Marvin ?

Wit. No, sir.

Com. What was the conduct of Mr. Cumming, which you supposed to be the effect of intoxication ?

Wit. Imprudent behaviour and speeches.

Mr. Cum-
ming com-
plains of
the course
of proceed-
ing.

During the examination of Miss Peck, Mr. Cumming stated that the course the trial was taking, was injurious and unjust ; that the questions were so formed, that it brought to issue, not the charges on record against Mr. Chester, but the charges on record against Mr. Cumming, hereafter to be tried in Schenectady. He thought the moderator assigned as a reason for adopting one of the rules for conducting the several trials at issue, that he

wished to keep the trials distinct. He called for the reading of that rule. The record, it appeared, was not present. He then demanded of the moderator to say, whether it was proper to take testimony, which related, not to Mr. Chester's, but to Mr. Cumming's cause.

Mr. Chester's Trial.
2d Charge.

The moderator said, that in a cause situated like the present. (and especially after the ground taken and settled by the parties, at the instance of Mr. Cumming, on the question of introducing Mr. Duncan's testimony) he did not see that it was possible to deny the defendant the privilege of giving the truth in evidence. Mr. Chester is charged with the industrious circulation of reports injurious to the character of the Rev. Hooper Cumming. If it is true that Mr. Chester has circulated such reports at all, or made such charges, it is not possible for presbytery to ascertain his innocence, or the degree of his guilt, or in any way to come to a righteous decision in his case, without knowing whether, what he has said, be true or false. If false, he is deeply guilty; if true, even still, unless his motive was good, he is guilty.

Moderator's reply.

Mr. Lucas.

Mr. Cumming. Did not Mr. Cumming say that Mr. Chester, at the interview held at Mr. Hutton's house, asserted that Mr. Marvin never told him (Mr. Chester) that he had seen Mr. Cumming intoxicated at his house; and that he (Mr. Chester) had not told Mr. Tucker that Mr. Marvin so said to him (Mr. Chester?)

Mr. I. Lucas' testimony.

Wit. Mr. Cumming did say to me, that Mr. Chester, at the interview at Mr. Hutton's, did say that Mr. Marvin never told him that he (Mr. Cumming) was intoxicated: and

Mr. Chester's Trial. that he (Mr. Chester) never told Mr. Tucker so.

2d Charge. *Mr. Cum.* Did not Mr. Marvin say the same in substance, with what Mr. Cumming stated to you ?

Testimony.

Wit. I have heard Mr. Marvin say, that he never told any body that you was intoxicated.

Mr. Cum. Did not Mr. Marvin say to you, that he had never suspected Mr. Cumming of being guilty of intemperance ?

Wit. Yes, sir.

Mr. Cum. Did not Mr. Marvin say to you explicitly, that he had never seen Mr. Cumming drunk ?

Wit. He did so.*

Drunkenness was next introduced. Mr. Marvin did not state any thing relative to this particular charge; but we asked him if he, (Mr. Marvin) ever saw Mr. Cumming intoxicated. Mr. Marvin said he had not, nor suspected him of being a person of that description; that Mr. Marvin had never seen him, (Mr. Cumming) make an improper use of liquor at his house; but he (Mr. Marvin) had learnt, from a person in Schenectady, that Mr. Cumming used a quart of spirituous liquor a day. Further, at an interview with Mr. Marvin, when a committee was appointed to investigate charges against Mr. Cumming, Doct. Nott called upon me, informing me that he was going to Albany, to inquire into the charges. Agreed that Messrs. Lucas and Cumming should go with him, if they wished. Mr. Lucas went with the committee to Mr. Marvin's. The committee, with Mr. Marvin and Lucas, retired to a private room. The committee stated to Mr. Marvin, that Mr.

*After the Milton sermon, see Mr. Lucas' testimony under the first charge.

Marvin reported, or that it was reported, that Mr. Cumming was intoxicated at his house. and that Mr. Marvin prevented him from going out of his house. Mr. Marvin replied, he had never said so, but he wished he could see the man that said he said so. Mr. Marvin said to Mr. Cumming, you know that I have said to you, that according to my ideas of prudence, you have acted imprudently. Mr. Marvin said, I don't know what the report of my holding you by the arm started from, except it was this, that I requested you to put up at my house, for your manner was such, that good, steady people would be disgusted with you, not knowing you.

Mr. Chester's Trial.
2d Charge.

Question by Mr. Smith.

Did Mr. Marvin, in his remarks to that committee, in the conversation last mentioned, according to your understanding, exculpate Mr. Cumming from all suspicion of *intemperance* at his house, or only deny that he was *drunk*?

Wit. The word *intoxication* was made use of.

Mr. Cumming made a motion, "That the judicial proceedings of the presbytery be arrested until to-morrow morning at 9 o'clock, that Mr. Cumming may have a fair opportunity of expressing his sentiments, and stating his grievances in writing, relative to the course presbytery have already taken, touching the trial of Mr. Chester."

Trial suspended till to-morrow, on request of Mr. Cumming.

The moderator stated, that the situation of Mr. Cumming was peculiar, and he trusted the court would be disposed to grant him the indulgence for which he had moved. The question being taken, was decided unanimously in the affirmative.

Mr. Ches-
ter's Trial.

2d Charge.

An inter-
locutory
meeting.

Mr. Cum-
ming's ob-
jection to
Capt. Bos-
worth's
testimony
considered.

Mr. Cumming then moved, "That Mr. Cumming be permitted to have free access, in the mean time, to the records of the presbytery which were made previously to the adoption of Mr. Chester's objection, which excluded Mr. Cumming's testimony." Which motion having been decided in the affirmative, the judicial proceedings were arrested, and presbytery went into an interlocutory meeting, on the appeal of Mr. Cumming from the decision of the chair.

The moderator stated, in the interlocutory meeting, that the question to be taken was, Whether the decision of the chair (in favour of Capt. Bosworth's introduction as a witness, against which Mr. Cumming had objected, on the ground that it would be unconstitutional, as he had not been cited, and ten days notice thereof given to the committee on the part of the prosecution) should be sustained.

The article, alluded to in the constitution, was in the words following :

"When complaint is made before the presbytery, it must be reduced to writing, and nothing further is to be done at the first meeting, unless by consent of parties, than giving the minister a full copy of the charges, with the names of the witnesses annexed thereto; and citing all parties, and their witnesses, to appear and be heard at the next meeting, which shall not be sooner than ten days after such citation.

In perfect conformity with this article of the constitution, presbytery may, the moment the charges are tabled, if the parties consent, proceed to issue them

The witness in question is Mr. Chester's. He of course consents to his introduction.

Nothing therefore but the consent of the presbytery, is requisite to bring him within the constitutional limit, even though the constitution had said, no witness shall be introduced unless by consent of parties, without ten days previous notice and citation. But the constitution says no such thing. So far from requiring that the defendant shall name his witnesses to the prosecutor, ten days before the trial, it does not even require that he shall name them to him, at all. It is to the accused only that the constitution secures this privilege, and it is not reciprocal. Nor is it necessary that it should be. The business of the prosecutor is to establish charges, and he can bring what evidence he pleases into court, without knowing what counter evidence will be brought. But the prosecuted does not know what evidence will be needful for him to bring, till he is informed what evidence is to be brought against him. Hence the constitution interposes and secures to him, that information, ten days, at least, previous to his trial.

Mr. Chester's Trial.

 2d Charge.

The question having been discussed, and Mr. Cumming heard, at length, the decision of the chair was sustained.

Decision of
 the chair
 sustained.

On the reading of this decision, when the court opened on Thursday morning, Mr. Cumming said he made another objection to the introduction of Capt. Bosworth, that had been omitted, to wit: That it violated the decision of the presbytery, as appears from their records, (which however he could not see) it was made on the — of March.

Mr. Cum-
 ming urges
 other ob-
 jections.

The moderator said, he regretted that the records of the meeting alluded to, were not present—he had no recollection of any decision at variance with that now made. But

Mr. Ches-
ter's Trial

2d Charge.

on whichever of these objections Mr. Cum-
mi g relied, it was to be regretted that it had
not occurred before. It could not, surely,
have been his uniform opinion, that the in-
troduction of new witnesses was either irreg-
ular or unconstitutional, else he would not
have moved, in his own behalf, on the first
day of the trial, for the introduction of Mr.
Duncan, whose name had not been given to
Mr. Chester ; nor would he have again mov-
ed in behalf of the commissioners, for Mr.
Duncan's readmission on the second day of
the trial ; nor, especially, would he have mov-
ed, in behalf of the same commissioners, and
on the same day, "*That both Mr. Chester
and Mr. Tucker, and the managers of the
charges against them should be at liberty to
introduce any witnesses to points now under
discussion.*" And yet Mr. Cumming would
recollect that he had himself made all these
several motions ; which last motion was not
acted on, because the court considered the
question already settled, and that the privi-
lege contemplated by it, had become in the
present cause, by the consent of the defend-
ant, common to the parties.

The moderator informed the court, that
conformably to their order, he had put his
own remarks into the hands of Mr. Cumming,
and that the clerk had read to him every
thing from the previous records, which Mr.
Cumming wished to have read to him.

Mr. Cum-
ming pre-
sents a de-
tailed
statement
of grievan-
ces.

Mr. Cumming then read a detailed state-
ment of grievances, which was, afterwards,
presented to be recorded, in the words fol-
lowing :

" In conformity with a resolution passed
by the presbytery of Albany, on the 9th day
of April, 1817, permitting the Rev. Hooper

Cumming, in a written form to express his sentiments and state his grievances, relative to the proceedings of said prebytery, in the trial of the Rev. John Chester, Mr. Cumming observes,

Mr. Chester's Trial.

2d Charge.

Mr. Cumming's statement of grievances.

“ First. That this presbytery have proceeded in a disorderly and unchristian manner, inasmuch as they have permitted questions to be proposed and answered, which prejudice a cause, in which he is deeply interested, and which is to be tried at Schenectady, on the 22d instant; inasmuch as they have permitted Mr. Chester and his friends to put interrogatories, the very nature of which, independent of the answers given thereto, is calculated to injure the reputation of Mr. Cumming; and inasmuch, as Mr. Cumming has been, in several instances, violently and successfully opposed, under the sanction, and with the approbation of this presbytery, when he endeavored to ask questions tending to his own exculpation.

“ Secondly. That the course of proceeding above alluded to, is in direct violation of the principles of humanity, the constitution of the presbyterian church, and the benevolent religion of the Lord Jesus Christ, which principles do all, most pointedly condemn, as unjust, a system of proscription, persecution and pre-judgment of a cause not yet decided.

“ Thirdly. That it is perfectly well known to the presbytery, Mr. Cumming has never been arraigned at their bar, nor cited to appear, on a charge of intemperance, and yet testimony has been permitted to be taken under oath, charging him with that crime.

“ Fourthly. That measures were adopted, at the suggestion of Mr. Cumming's enemies, as he has very strong reasons to believe,

Mr. Ches-
ter's Trial.

2d Charge.

Mr. Cum-
ming's
statement
of grievan-
ces.

for the purpose of keeping him from the pres-
bytery at the commencement of their present
session ; that Mr. Cumming did, in conse-
quence of the representations made to him,
conceive it to be a duty he owed the cause of
his Divine Master, to absent himself from
the meeting of presbytery about two hours
on the morning of Tuesday, April 8th,
because an impression had been fastened on
his mind, by the most solemn declarations of
a man whom he had, and still has, very
strong reasons to consider his friend ; but
who has, as Mr. Cumming now unwaveringly
believes, been misled by the enemies of Mr.
Cumming, that the presbytery would sit
with closed doors : and, so sitting, endea-
vour to effect a reconciliation between all
persons concerned in the painful transactions
which are now at issue, and will be until
after the 22d instant : that the presbytery did
not attempt such a pacific measure, but pro-
ceeded immediately to business with open
doors, and then permitted Mr. Chester to
calumniate Mr. Cumming, in the most
shameful manner, as appears from the elab-
orate harangue which he read, and which
is now on record—that when Mr. Cumming
was, by tried friends, providentially and to
his utter surprize, informed of the course the
presbytery were pursuing, he appeared as a
member of the house, but was immediately
informed that he could not then take his seat,
because he was a witness in the case—that,
when he was about being called, for the pur-
pose of giving his testimony, *that* testimony
was objected to, on the ground of his interest
in the cause—that Mr. Chester was permitted
successfully to oppose the admission of that
testimony, and even while he passed a com-

pliment evidently insincere on Mr. Cumming's veracity, to state that his own acquittal would be his condemnation; thus identifying his own cause with charges never brought before presbytery, in any shape, against Mr. Cumming; that, after all these cruel and unprecedented measures, Mr. Mark Tucker, directly and deeply involved as he is, in the charges exhibited against Mr. Chester, was permitted to testify in the case, and that Doct. Nott, the moderator of the presbytery, was, without any opposition on their part, suffered, when Mr. Chester's objection against Mr. Cumming's testimony was under consideration, deliberately to charge Mr. Cumming with *insanity*; a charge which powerfully tends, as far as that Reverend Doctor's opinion has influence, to destroy Mr. Cumming's dearest temporal interests.

Mr. Chester's Trial.

2d Charge.

Mr. Cumming's statement of grievances.

“ *Fifthly.* It needs no argument to prove, that the presbytery have not a right to pre-judge any case; and surely none is needful to show the wicked precipitancy of permitting a minister of the gospel, while in good and regular standing, to be calumniated and reviled, stigmatized and held up to publick odium, under any plea whatever.

“ *Sixthly.* Mr. Cumming complains, that, in repeated instances, he has been debarred the privilege of expressing his sentiments on the floor of this presbytery, while other gentlemen have not been so embarrassed; and that, although there has been a studious effort on the part of Dr Nott, the moderator, to make the publick believe him impartial, he has, nevertheless, repeatedly prevented Mr. Cumming from speaking, when, in his place as a member of the house, he considered himself precisely in order.

Mr. Ches-
ter's Trial.

2d Charge.

Mr. Cum-
ming's
statement
of grievan-
ces.

“ *Seventhly.* Mr. Cumming feels himself bound in conscience to state, that this presbytery have not now, nor ever had, a constitutional, or scriptural right to take that wide range which they have embraced, in the examination of witnesses, on Mr. Chester's trial. They ought to have confined themselves to the points at issue, which are these :—1. An industrious circulation of reports injurious to the character of Mr. Cumming.—2. Slandering Mr. Cumming, in a conversation with Mr. Tucker.—3. Falsehood in denying that he had told Mr. Tucker any thing prejudicial to the moral character of Mr. Cumming.—4. Falsehood, in contradicting that denial. These are, *in fact*, the points at issue in Mr. Chester's case, however artfully drawn the charges and specifications, already recorded on the minutes of this presbytery, may be. Now, then, the presbytery should not have deviated from this course of procedure, viz: examining witnesses and proposing the charges in due order, they ought to have asked, what do you know, concerning these several charges, and not, what do you know concerning Mr. Cumming. This should have been the mode, particularly as Mr. Cumming is not now on trial before the presbytery; and more particularly, because he has never been arraigned, at all, on the article of intemperance, and more particularly still, because this presbytery are, or may very soon be put in possession of the fact, that the committee of investigation, appointed at Schenectady in the month of February last, on the case of common fame, *versus* the Rev. Hooper Cumming, did, after a patient and prolonged hearing, on this very topic, unanimously reject the charge, as a

calumny unsupported by evidence, and originating in a spirit of persecution.

Mr. Chester's Trial.



2d Charge.

“ *Eighthly.* Mr. Cumming moreover complains, that he has not been able to procure the privilege and the just and unalienable right appertaining to him, as a member of this house (although he has several times demanded that right, of the presbytery) of cross-examining witnesses, who testified before he had an opportunity of being present ; he observes that he ought to have been examined as a witness ; that his testimony ought to have been taken at a very early period of this prosecution ; he complains moreover, that he has been trifled with and oppressed, inasmuch as, after having been debarred the right of taking his seat as a member of the presbytery, on the ground that he was a witness in the case, the giving of his testimony was finally objected to ; that he has wished to cross-examine the Rev. Docts. Hosack and Nott, and Mr. Isaac Hutton, but in vain ; and that, after more than one application to that effect, he could neither procure a decision of this presbytery, on the question, nor obtain a knowledge of the time when, if ever, such cross-examination might be instituted.

Mr. Cumming's statement of grievances.

“ *Ninthly.* Mr. Cumming has no objection that his whole conduct, since he became a member of this presbytery, should become matter of judicial investigation, provided the presbytery proceed according to the constitution of the church ; but he does most solemnly protest to a course of measures, which tries him when not arraigned, on charges *too*, which have not been exhibited against him ; and that, moreover, for the purpose of excul-

Mr. Chester's Trial.

2d Charge.

Mr. Cum-
ming's
statement
of grievan-
ces.

pating and justifying Mr. Chester, the actual criminal at your bar.

“*Tenthly*. It can be substantiated by incorruptible and sufficient testimony, that Dr. Nott did, at the last meeting of the presbytery, assign it as a reason for two rules of order, which he moved, and which were by presbytery adopted, that the trials of Mr. Tucker and Mr. Cumming, which are to succeed Mr. Chester's, might not be prejudged. The first rule is in words to this effect : “No question shall be proposed to a witness, until after the consent of the moderator shall have been obtained.” The second, in words to this effect : “All questions shall be in writing.” And, notwithstanding this my cause has been sedulously, and, as I have powerful reasons to believe, by previous consent between several members of this presbytery, substituted in the place of Mr. Chester's.

There are many other grievances which I have not time to state, more particularly referring to the different manner in which my friends and those of Mr. Chester's, have been treated, while under examination as witnesses.

In a review of every transaction of this presbytery, which has fallen under my observation, touching Mr. Chester's trial, I cannot do otherwise than deliberately, and solemnly, to protest against the past proceedings ; and demand as an act of common justice, that the trial be entered upon *de novo*, and conducted in a spirit of equity and sound order ; and that this, my protest, together with all these written observations, be, in its proper place, entered on the minutes of the presbytery.

Hooper Cumming.”

Read as amended.

The moderator said he had no objection to Mr. Cumming's statement just read, going on the record; this was a privilege he was willing to allow: not the less so, because his own opinions and acts had, in the document presented, been made a subject of animadversion. If any thing said or done by him, should ultimately appear to have been said or done in error, he should deeply regret it; and in the mean time gave it as his opinion, that the records which would perpetuate those opinions and acts supposed to be injurious, should also perpetuate the proffered antidote, and he only claimed the privilege of thereafter subjoining such explanatory remarks and documents, as would, he hoped, do away in Mr. Cumming's mind, his principal objection.

Mr. Chester's Trial.

2d Charge.

Moderator's assent to the recording of the above.

Mr. Cumming requested to make some corrections in the document he had read, before it should be recorded. Whereupon, it was *Resolved*, that the same be returned to him for the purpose of his amending it, by altering any part of it, or by adding to it, at his discretion, so as to comprehend any other remarks which he may consider necessary in the further progress of the trial.

As the court were about to proceed to the examination of the remaining witnesses of the defendant, Mr. Cumming again objected, and having moved a resolution in the words following: "*Resolved*, that the trial of Mr. Chester be commenced *de novo*, and conducted in a manner which shall not implicate the characters either of Mr. Tucker or Mr. Cumming," demanded liberty to speak to the same. Liberty was granted, and he spoke to it accordingly.

Mr. Cumming objects to the trial's proceeding.

Mr. Ches-
ter's Trial.



2d Charge.

Dr. Blatch-
ford's re-
solution.

Mr. Cum-
ming de-
termines to
withdraw.

The mode-
rator ex-
plains and
vindicates
the course
pursued by
the court.

Dr. Blatchford moved the following reso-
lution :

Whereas a particular interest is felt by the
Rev. Hooper Cumming, and Messrs. Eaton
Graham and Lucas, commissioners on the
part of the 3d Presbyterian church, in the
progress and issue of this trial ; therefore,
resolved, that the above-named persons be at
liberty to take their seats with Mr. Cumming,
and assist him, and, through him, propose any
question which they may deem necessary;
which was unanimously adopted.

The court were again about to proceed to
the examination of the defendant's witnesses,
when Mr. Cumming rose and said, that it was
evident, he could not obtain justice in this
judicatory; that it was useless for him to
waste his health, and have his spirits depress-
ed; that he did not say, he would decline his
seat on this floor ; but that, in the exercise
of a right common to every member of pres-
bytery, he asked leave to withdraw for the
present

The moderator afterwards added, that it
would have been unconstitutional to have en-
tered on Mr. Chester's trial with closed doors ;
that it was Mr. Cumming's commissioners
that gave his name as a witness ; that it was
the constitution that excluded witnesses not
yet sworn, while another witness was under
examination; an inconvenience to which the
other members of presbytery were subjected ;
that Mr. Cumming was so placed on the list
of witnesses, as to be called at a very early
period of the trial ; and that he never was
excluded from presbytery one moment after
he first entered it. The moderator thought
that the explanation given by the committee,
must have escaped Mr. Cumming's recollec-

tion, or it would have been deemed satisfactory. He adverted to the record, to recall the transaction, which was in the words following. "Mr. Cumming appeared in presbytery, and stated, that he had been unavoidably prevented from appearing sooner:—that he had supposed presbytery were sitting with closed doors:—that he had providentially been informed that they were suffering his character to be publicly assailed, and he came to claim his seat as a member, and to demand that the proceedings be arrested; and that the moderator give him a statement of all that had been done from the opening of presbytery until that time. The moderator declined doing this; but decided that the clerk should read to Mr. Cumming the testimony taken. This decision was objected to, on the ground that Mr. Cumming was himself a witness, and could not, according to the constitution, hear the previous testimony, until he had himself been sworn. The objection was deemed insurmountable by the moderator, who thereupon reversed his decision, giving it, however, as his opinion, that the request of Mr. Cumming ought to be granted, as soon as it could be constitutionally done.

"Mr. Cumming then stated, that he ought to be forthwith called as a witness; that it was very important to his character to be present during Mr. Marvin's examination; that he had not had the opportunity of cross-examining the preceding witnesses, and he wished, in the case of Mr. Marvin, to avail himself of that privilege.

"Mr. Hutton, on the part of the committee for conducting the prosecution, stated that, in arranging the witnesses furnished them

Mr. Ches-
ter's Trial.

2d Charge.

Moderator
explains
and vindic-
ates the
course pur-
sued by the
court.

Mr. Chester's Trial.

2d Charge.

Moderator explains and vindicates the course pursued by the court.

in this cause, they had placed Doct. Nott, first, because he was moderator ; Doct. Hosack next, because he was a member of presbytery ; that his own name had been placed next, because he was on the committee for conducting the prosecution ; and that Mr. Marvin had been placed next, because they were present together at the interview alluded to in the prosecution. Next to Mr. Marvin they had placed Mr. Cumming, making him the fifth witness, instead of the ninth, as he stood on the list of witnesses furnished by Messrs. Eaton Graham and Lucas, Mr. Cumming's commissioners.

"He could have wished Mr. Cumming had been present at the opening of the trial. He knew no reason why he had not been. He supposed, at the time Mr. Cumming remained absent out of delicacy ; but, whatever the cause might have been, the committee had done nothing to prevent, or to delay his appearance in presbytery."

The moderator added, it had been suggested that the committee for conducting the prosecution had consulted with Mr. Chester's counsel, in the formation of their interrogatories ; but, with whomsoever they had consulted, one thing would be apparent from a review of the trial, as far as it had proceeded, that they had sedulously avoided so much as touching on any point not immediately at issue. And it was agreeable to find by comparison, that the form of questions which Mr. Cumming says ought to have been adopted, is, in substance, and almost in terms, the very form which the committee had adopted, and that they had avoided, throughout, that form which Mr. Cumming has condemned. If there be any one exception in which they

have asked any witness not "what do you know concerning the several charges," but "what do you know concerning Mr. Cumming," it had escaped the notice of the moderator, and, he presumed, of the whole court.

Mr. Chester's Trial:
2d Charge,

Rev. Noah M. Wells, one of the members of the committee, appointed to conduct the trials of Mr. Chester and Mr. Tucker, was called and sworn.

Enquiry as to any connivance with the accused.

Moderator. Did Mr. Chester ever consult with Mr. Wells in regard to the management of this cause?

Witness. No, sir.

Mod. Did Mr. Chester's counsel ever consult with you on that subject?

Witness. No, sir.

Mr. Isaac Hutton, the other member of the committee was called.

Mod. Have you had any consultation with, or direction from Mr. Chester's counsel, as to the formation of those questions, or the arrangement of those witnesses, as presented by you, in your formula of interrogatories at Mr. Chester's trial?

Witness. I have had no interview with any body.

Mr. Chester. Did Mr. Chester ever consult with Mr. Hutton, in regard to the management of this cause, except that Mr. Cumming should be placed as high as possible on the list of witnesses; that Mr. Cumming might be present during the trial?

Wit. No, he never did; the consultation referred to was not really such, but a common conversation on the propriety and necessity of putting Mr. Cumming in as early a place as possible. I had, two or three times, endeavored to ascertain the nature of

Mr. Chester's Trial.

2d Charge.

Enquiry as to any connivance with the accused.

defence intended to be made by Mr. Chester, in order to judge of the mode of proceeding ; but did not know the nature of his defence, until after the questions intended to be put, were proposed by the committee. I have stated to Mr. Chester, my determination to put Mr. Cumming as near the head of the list of witnesses, in the order of examination, as possible ; but I have not had any consultation on the subject.

Mod. Whom did you consult, as to the plan of trial, and the formula of questions, in the cause of the Rev. John Chester and Mr. Mark Tucker ; and what was the advice given you, as to the extent of truth which you were bound to bring out before the court, and the precise limits beyond which your interrogatories should not reach ?

Wit. Doct. Nott, and none else.

Mod. Have you Doct. Nott's opinion in writing, and, if so, will you produce it ?

Wit. I have.

Mr. Hutton then read Doct. Nott's opinion, in the words following :

Written opinion previously given by Dr. Nott to the committee appointed to conduct the trial as to the proper course to be pursued.

" It is incumbent on the committee, who are to conduct the prosecution against Messrs. Chester and Tucker, to present to the court all the evidence (in the possession of that committee) of the truth of the charges on record against those individuals, and also, all the evidence requisite for placing their conduct, touching the points at issue, in a just light. So much truth as this, though it should militate against third persons, is indispensable. So much therefore ought to be made to appear, and no more. It is within the knowledge of the committee who examined the witnesses on the information against Mr. Chester, that he admits that he has said

something of his own knowledge relative to Mr. Cumming's having preached at Milton from a sermon of Mr. Channing's. So far as concerns the truth of what Mr. Chester actually said, you are bound to enquire : because, without being informed whether what Mr. Chester has said, be true, or false, the court can neither ascertain his innocence, nor the degree of his guilt. With Mr. Cumming, however, in this trial, we have nothing to do, and you will not interrogate any witness, as to the fact of Mr. Cumming's having preached Mr. Channing's sermon, but merely whether so much as Mr. Chester may have told concerning that sermon, is true.

Mr. Chester's Trial.

2d Charge.

Written opinion previously given by Dr. Nott, to the committee appointed to conduct the trial, as to the mode to be pursued.

It is within the knowledge of the same committee, that Mr. Chester admits that he has said something concerning the intemperance of Mr. Cumming at Mr. Marvin's. As, however, he is said to have given Mr. Marvin, at the time, as his author, in deciding on Mr. Chester's conduct, it is not needful for the court to know whether what Mr. Marvin told him, was true, or false ; but merely, whether he told Mr. Tucker the same thing that Mr. Marvin told him, and no more ; you are bound to require Mr. Marvin to declare all that he told Mr. Chester, but you are not bound to require him to testify to the truth of any part of it. With respect to other witnesses conversant with what transpired at Mr. Marvin's, you ought to enquire, not what they know concerning Mr. Cumming's intemperance ; nor what Mr. Marvin may have told them ; but merely what they may have heard Mr. Marvin tell Mr. Chester, or in his presence. The Court only require to be informed what Mr. Marvin told Mr. Chester, and what Mr. Chester told Mr. Tucker, and

Mr. Ches-
ter's Trial.

2d Charge.

Moderator
continues
to explain
and vindicate
the
course pur-
sued by the
court.

the circumstances of the telling, to put them in possession of every thing requisite, as far as I can see, for a righteous decision. Short of this, you may not stop ; beyond it, you ought not to go."

Over the ground on which Mr. Chester has chosen to place his defence, the court have not the same controul. His trial has originated in an information filed by Messrs. Eaton, Graham and Lucas ; and two of the charges preferred against him, were for slandering Mr. Cumming. Mr. Chester, in pleading to these charges, had claimed to give the truth in evidence ; a claim not to be disputed, because it is not to be disputed that he had, both according to usage and to law, a right to do so ; the exercise of which right had put the character of Mr. Cumming indirectly at issue, so far as the alleged slanders of Mr. Chester were concerned. Nor could the moderator conceive by what new form of process, were the trial commenced *de novo*, as was recommended, Mr. Cumming supposed Mr. Chester could be tried for slandering him, without trying the question whether what Mr. Chester had said concerning him, were slander, or not. If it were slander, still its truth or falsehood must vary its malignity, and the court, that would refuse to consider so material a circumstance, would, when the calm of reason returned, be deemed neither a court of equity nor justice.

With respect to intemperance, it was true, that Mr. Cumming had not been impeached for that crime, before this court ; but it was no less true that Mr. Chester had been impeached for the crime of slandering Mr. Cumming in that respect ; or, in the words of the impeachment, for *making a charge of intoxi-*

cation against him. Now, if Mr. Chester had made this charge, he had an undoubted right to prove it, and the court would be bound to take that proof into the account, in making up their judgment. It was strange that it could have been expected that any person could be tried for *making a charge*, without being allowed to show the truth of the charge that had been made. Would it be said that, when a minister of the gospel spoke ill of his brother, *the truth or falsehood* of what he said, made no difference in the moral character of the action? But, that Mr. Chester made this charge, he has not admitted. On the contrary, he has pleaded that, so far as it has been made at all, Mr. Marvin made it. Now, surely, Mr. Cumming himself will not, on reflection, wish that Mr. Chester should be compelled to lie under the imputation of making a charge, which, in truth, *he did not make*. And if, as Mr. Marvin has sworn, he told Mr. Chester what Mr. Chester told Mr. Tucker, why should it have been denied to Mr. Chester to show that Mr. Marvin had told him this, which is all that was allowed to be shown. The question put to Mr. Marvin, being not, "What do you know concerning the Rev. H. Cumming's intemperance?" but, "*What did you tell the Rev. John Chester concerning it?*" His answer was, "*I told him that I had satisfied myself with my own eyes, and the observation of my family and some of Mr. Cumming's friends, that Mr. Cumming had made so free a use of ardent spirits, as not to be himself; or, out of his right mind.*"

Mr. Chester's Trial.

2d Charge.

Moderator continues to explain and vindicate the course pursued by the court.

If Mr. Chester has since been allowed to put to witnesses interrogatories of a different character, it will be remembered that it was

Mr. Chester's Trial.

2d Charge.

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not till Mr. Cumming had undertaken to discredit the testimony of Capt. Marvin ; and thereby invested Mr. Chester with the right of restoring the credit of the same ; and nothing could more effectually restore the credit of Mr. Marvin's testimony which related to the fact of telling Mr. Chester, than to the calling of the persons to whom he appealed to testify as to the truth of the matter told. And, besides, after Mr. Chester had consented to the introduction of Mr. Duncan, to discredit Capt. Marvin, (which, by the constitution, he could have prevented) and especially as he consented under an assurance that the truth of what the witness had said was to be put at issue, the court could not now refuse it. Stipulations made in open court, in strictness of morality, as well as technically, held the parties. Mr. Cumming having availed himself of Mr. Duncan's testimony, and, also, of Mr. Lucas' to the same point, must not now refuse to Mr. Chester, the advantages of countervailing testimony.

With respect to the cross-examination of the three individuals sworn before Mr. Cumming came into Court, it was known that, the first time it was suggested, the moderator decided that the request should be granted, and the decision was on record. The only reason that it had hitherto been waved, was that the court were occupied, and there were witnesses in waiting, who could not, without great personal inconvenience, be detained. The privilege, however, remained, and Mr. Cumming might avail himself of it, at any time before the trial closed.

Mr. Cumming had truly stated the reason which the moderator assigned for one of the rules of order heretofore adopted. It was,

however, within the knowledge of the court, that Mr. Cumming differed from the moderator concerning that rule of order, assigning as a reason, that it infringed the constitutional privilege of the accused, and he forewarned the presbytery, that when, on his own trial, he should claim the right of asking any question which he himself might think would tend to his exculpation; to which extent Mr. Chester surely has not been indulged, his questions having been uniformly subjected to the judgment of the court, and in several instances, overruled.

Mr. Chester's Trial.

2d Charge.

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The moderator early foresaw how different it would be to keep the trials pending before this court, distinct. To secure this, however, as far as was practicable, he sketched that plan which has been exhibited. If the limits therein fixed, had been transgressed, he trusted that Mr. Cumming, after his present perturbation of mind was over, would not hold the moderator responsible for the transaction, since it had taken place, as far as he could recollect, in every instance, at Mr. Cumming's own particular request. It was Mr. Cumming who proposed, that Mr. Smith should be examined, *as to any thing he might have heard Mr. Chester say, relative to Mr. Cumming's plagiarism*, and that too, after the very question had been put to Mr. Smith, which Mr. Cumming now thinks should alone have been put to any witness; and after Mr. Smith, in answer to which question, had declared, that he did not know any thing concerning the charges in question. It was Mr. Cumming who extended the range of enquiry, (when Mr. Warren and Mr. Eaton were under examination) to a conversation about plagiarism generally; and it was Mr. Cumming who ex-

Mr. Chester's Trial.

2d Charge.

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tended the enquiry, by the introduction of Mr. Duncan, beyond the fact of Mr. Marvin's having told Mr. Chester something about intemperance, to the truth of what he told. In all these instances, Mr. Chester was opposed to extending the range of enquiry, and Mr. Cumming in favour of it; it appeared strange, therefore, that he should now be under the impression, that it had been done out of favor to Mr. Chester. The moderator supposed, at the time, that Mr. Cumming had claimed it as a privilege due unto himself.

The moderator trusted presbytery were as sensible as Mr. Cumming could be, that *he* was not now under trial, and that they had no right to pre-judge his cause. He thought, however, that Mr. Cumming would admit that they had as little right to pre-judge the cause of that brother who was upon trial, and who, (though he should, ultimately, be found *the actual criminal at the bar*) still had rights which ought to be respected, by those who sat in judgment on him; for the constitution under which they sat, imperatively said in his behalf, *the trial shall be open, fair, and impartial*, and the accused *shall be permitted to ask any questions tending to his own exculpation*. If, therefore, it be a fault that Mr. Chester has been allowed to ask such questions, Mr. Cumming, on reflection, would perceive that it was not the fault of presbytery, but, of the constitution. It ought to have been foreseen that if Mr. Chester was to be tried at all, that he must be tried constitutionally. Mr. Chester has not placed himself at the bar of the court; the court did not originate *the information* which had placed him there. If it had been deemed by the friends of Mr. Cumming that it be injurious

to him, for Mr. Chester, when on his defence, to give the truth in evidence, they ought not to have preferred those charges, from the very nature of which it became the duty of the court to allow him to do so; for it could not be denied, without manifest injustice, to the accused on trial, to exculpate himself, lest his exculpation should militate against the individual in whose behalf the accusation at issue had been preferred.

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Mr. Cumming thinks he ought to have been admitted as a witness. The court had decided differently; and the moderator, at the time, doubted whether, on the ground of mere interest in the cause, which was the only ground taken, Mr. Cumming was, in strictness of law, incompetent on all the charges; and though he could have wished a change in the terms in which Mr. Chester's exceptions were stated, still there were objections which, had they been made, would, in his mind, have been altogether insurmountable. For there was no sounder canon than that, "Accusers, persons at enmity with the accused, persons under censure, or process for censure, cannot be admitted as witnesses, either for or against an offender."

That Mr. Cumming had an indirect interest in the issue of this cause, was not, after what had transpired, to be disputed, and it was certainly not to be disputed that, at the time he was rejected as a witness, he was himself under process for censure, and that too for deliberate falsehood, than which, till it was wiped away, no charge could be urged with greater reason against his admission as a witness.

Mr. Cumming seems to think that it was inconsistent, having rejected him, to allow Mr. Tucker, "deeply involved as he is in the charges against Mr. Chester," to be sworn. It is to be regretted that this was

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2d Charge.

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not mentioned at the time. Mr. Tucker was a witness named by Mr. Cumming's commissioners. When he was called, the question of his competency was suggested by a member of the court. But he was not objected to by either party, and was therefore sworn of course ; and had he been rejected, to say nothing of the singularity of rejecting a witness, against whom no objection had been raised, it may be doubted whether Mr. Cumming would have commended the impartiality of such rejection, inasmuch as it was in a conversation with this same Mr. Tucker, that Mr. Chester was said to have slandered Mr. Cumming relative to intemperance, and inasmuch as the informers had no other so important witness to produce (the conversation being private) to substantiate their charge against Mr. Chester.

Mr. Cumming has stated specifically and in detail, what he now considers to be "*in fact, the points at issue in Mr. Chester's case.*" It will be seen by comparison, that the points now stated differ somewhat from the *charges originally* made out and on record. Those charges, however, it is intimated, were artfully drawn. This might have been the case. Still, however, Mr. Cumming, on reflection, must remember, what was now in evidence, before the court, that the charges, both in the case of Mr. Chester and Mr. Tucker, were originally presented by Messrs. Eaton, Graham and Lucas, Mr. Cumming's commissioners, and that, after they had been reported to presbytery unaltered, except to insert the names of persons and places, which was done in Mr. Cumming's presence, and, as he stated the same to be, these charges were again recommitted to be amended, and were amended and enlarged by the direction and in the very words of Mr. Cumming himself.

**The points now said by
Mr. Cumming to be the
points at issue.**

I. An industrious circulation of reports injurious to the character of Mr. Cumming.

II. Slandering Mr. Cumming in a conversation with Mr. Tucker.

III. Falsehood in denying, that he had told Mr. Tucker, any thing prejudicial to the moral character of Mr. Cumming.

IV. Falsehood in contradicting that denial.

Mr. Cumming.

industrious circulation of reports, to wit: Mr. Channing's, a charge of infamy on U. Marvin; and the presence of U.

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inst Mr. Chester,

inst Mr. Tucker,

Charges

As presented originally by the informers, Messrs. Eaton, Lucas and Graham.

I. Common fame charges the Rev. John Chester with the industrious circulation of reports injurious to the character of the Rev. Hooper Cumming, to wit : preaching other people's sermons.

Witnesses. Dr. Nott, Judge Thompson, Chester Bulkley, J. L. Winne, Uriah Marvin, Rev. H. Cumming, Mr. Sweetman, J. Boardman.

Also ;

II. Making a charge of intoxication against the Rev. H. Cumming ; and of falsehood in denying the same when charged therewith.

Witnesses. Mark Tucker, Drs. Nott and Hosack, Mr. M'Crea, Mr. Marvin, I. Hutton, Rev. H. Cumming, Mr. Sweetman, J. Boardman.

Common fame charges the Rev. Mark Tucker with falsehood, and the industrious circulation of reports against Mr. Cumming, to wit : Intoxication, and preaching other people's sermons.

Witnesses. Thos. M'Auley, J. Crane, S. Lee, Rev. H. Cumming, E. Clarke, George M'Queen, N. Bassett, Rev. J. Chester.

Charges

As first reported by the committee.

Common fame charges the Rev. John Chester with the industrious circulation of reports injurious to the character of the Rev. Hooper Cumming, to wit :

I. Preaching at Milton, on the 11th Dec. 1816, a sermon of the Rev. Mr. Channing's.

II. With making, when in conversation with Mr. Mark Tucker, a charge of intoxication against the Rev. Hooper Cumming, at the house of U. Marvin, and with falsehood in denying the same, when charged therewith, in the presence of U. Marvin and I. Hutton.

Common fame charges Mr. Mark Tucker with the industrious circulation of reports against the Rev. Hooper Cumming, to wit :

I. Intoxication at Mr. U. Marvin's, and preaching other people's sermons.

Also ;

II. With falsehood, in asserting that the Rev. J. Chester was his author of the report of Mr. Cumming's intoxication at Mr. Marvin's.

Charges

As amended and enlarged by the committee, at the instance of Mr. Cumming.

I. Common fame charges the Rev. John Chester with the industrious circulation of reports injurious to the character of the Rev. Hooper Cumming, to wit : preaching at Milton, on the 11th Dec. 1816, a sermon of the Rev. Mr. Channing's.

II. With making, when in conversation with Mr. Mark Tucker, a charge of intoxication against the Rev. Hooper Cumming, at the house of U. Marvin ; and with falsehood in denying the same when charged therewith in the presence of U. Marvin and I. Hutton.

III. *With falsehood on his examination before Dr. Nott, Dr. Hosack and Mr. M'Crea, in Schenectady, relative to an interview with I. Hutton and U. Marvin, in Albany, 3d of January, 1817, viz. Telling the said committee that he told Mr. Cumming at the aforesaid interview in Albany, that Mr. Marvin told him that he saw Mr. Cumming drunk at his house.

* Common fame charges Mr. Mark Tucker,

I. With unchristian conduct, by an industrious circulation of reports against the Rev. Hooper Cumming, to wit : Intoxication at Mr. Marvin's, and preaching other people's sermons.

II. *With falsehood in asserting that the Rev. John Chester was his author of the report of Mr. Cumming's intoxication at Mr. Marvin's.

III. *With falsehood in an interview with the Rev. Mr. Cumming and Professor M'Auley, at Schenectady, Jan. 2d, 1817, in a declaration he made to the Rev. H. Cumming in the following words, to wit : " Except the Marvin business, I never opened my lips against you," which was false.

1st *Specif.* Because he had previously at Mr. Marvin's, used very abusive language relative to the character of the Rev. H. Cumming, for which Mr. Marvin had checked and reproved him.

2d *Specif.* Because he had previously slandered the Rev. Hooper Cumming, in conversation with Dr. Coe, Dr. Burritt, Mr. Kellogg and Wm. M. Bliss.

3d *Specif.* Because he had previously endeavoured to detach from Mr. Cumming, the affections of Jonathan Crane and Samuel Lee, two of his elders, by calumniating him.

4th *Specif.* Because he had spoken reproachfully of the Rev. H. Cumming relative to his drunkenness and plagiarism, to Mr. John Platt and wife ; also to Elam Clarke and Stephen Crosby ; also to Benjamin B. Wisner, Samuel S. Davis, Professor M'Auley, and the widow of William J. Teller.

Rev. Thomas Halliday, was called and sworn.

Pres. At whose instance, and by whose direction was the third charge against Mr. Chester, inserted in the report of the committee ?

Wit. The Rev. Hooper Cumming's.

Pres. At whose instance, and by whose direction was the last charge against Mr. Tucker, and the several specifications under it, inserted in the report of the committee ?

Wit. The Rev. Hooper Cumming's.

* Omitted in the report of the committee, page 15, for the sake of brevity.

The points now said by Mr. Cumming to be the points at issue.

I. An industrious circulation of reports injurious to the character of Mr. Cumming.

II. Slandering Mr. Cumming in a conversation with Mr. Tucker.

III. Falsehood in denying, that he had told Mr. Tucker, any thing prejudicial to the moral character of Mr. Cumming.

IV. Falsehood in contradicting that denial.

Although presbytery did proceed to the trial of the Rev. J. Chester, when the hour appointed for it arrived, it was known to Mr. Cumming that the moderator, in conjunction with Capt. Bosworth, the friend of Mr. Cumming, did endeavor to bring about a voluntary settlement, and thereby prevent the necessity of any public trial. Overtures were made to the moderator by Captain Bosworth, and were said to have been acceded to by Mr. Cumming, which the moderator acceded to, and had progressed far in obtaining the acquiescence of the other persons concerned, when he was arrested in his endeavours to consummate the intended settlement, by a communication from Capt. Bosworth, that Mr. Cumming had altered his mind. Again the settlement was undertaken, and again abandoned for the same reason, as Captain Bosworth informed him, and which was the only reason of its abandonment, so far as he had yet learned.

As to the opinion expressed by the moderator of Mr. Cumming's derangement, he had nothing to add except that this was done at the request of Capt. Bosworth, and that it was known to himself at the time ; that the same opinion was entertained by Mr. Cumming's own father, and by his brother, his family physician, and several of his most intimate friends ; and he did not doubt they would appreciate the motive that prompted him to make this known.

It was a source of deep regret to the moderator, to have been placed in a situation in which he had been obliged to say or do any thing, that Mr. Cumming should deem injurious, and he had extended these extra-judicial remarks further than he otherwise

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2d Charge.

Moderator continues to explain and vindicate the course pursued by the court.

Mr. Chester's Trial.

2d Charge.

Moderator continues to explain and vindicate the course pursued by the court.

Testimony of Capt. L. Bosworth.

should, in the hope that they might ultimately tend to remove that delusion which seemed to have taken possession of his mind, both with respect to the acts of the moderator, and also of the presbytery, and which, he still trusted would vanish, when a more lucid interval should return.

Examination of Capt. L. Bosworth, sworn on the part of the defendant.

Mr. Chester. Do you know any thing of Mr. Cumming's intemperance at Capt. Marvin's ?

Witness. Mr. Marvin asked me, if I did not think Mr. Cumming drank too much. I told him I was afraid he did ; I had observed it at Mr. Marvin's house.

Capt. Bosworth then presented a written statement, which he thought it his duty to communicate.

After the moderator had read the same, which was put into his hands by Capt. Bosworth, he observed, "That though what was therein contained could not be received as evidence on the charges against the Rev. John Chester, still it had generally a bearing on an incidental question brought up by a document introduced during this trial by the Rev. Hooper Cumming, and which was now on record, complaining of the moderator to presbytery for having intimated an opinion that Mr. Cumming was not altogether sane ; and that after the statement of Capt. Bosworth was read, he should claim the right to interrogate him as to the facts within his knowledge, that led the moderator to make the intimation alluded to

Capt. Bosworth then proceeded : " The following is a narrative of the Rev. Hooper Cumming, who was suspended from the min-

isterial office, from the 2d presbyterian church in Newark, in the fall of 1814, for partial derangement. It was the opinion of the Rev. Hooper Cumming's father, Doct. James Lee, and several ministers in presbytery, that he was partially deranged, and I did consider him so myself. In the spring of 1815, I saw Mr. Cumming in New-York, on my way to Albany, and thought him to be better. I went to Schenectady, and had an interview with Dr. Nott, and mentioned Mr. Cumming's delicate state of mind and standing; and suggested to Dr. Nott, that I believed it would do him good to make a visit to Schenectady, and he believed it would; and I had better bring him along on my next trip to Albany; it would do him no hurt, if it did not do him any good, a revival of religion being at that place at that time. On my return to Newark, I asked Mr. Cumming if he would go to Schenectady with me and see Dr. Nott, which he consented to. But his parents refused, until they understood it was the opinion of Dr. Nott, and Dr. James Lee, that it would do him good, they consented that he might go. When I came to Albany I introduced him to Uriah Marvin and family, and stated to him in confidence, the delicate state of the mind of Mr. Cumming; and also went to Schenectady and introduced him to Jonathan Price and family, and stated to him his delicate state of mind and standing; and then went to the college and introduced him to Dr. Nott, as before stated. On his passage from Newark to Albany, he behaved with a great deal of propriety, and with the gravity and dignity of a minister. A short time after my return, the presbytery set, and called for me as a witness. I stated to them

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his behaviour on the passage to Albany. The presbytery then, after hearing some other witnesses, gave liberty for Mr. Cumming to preach in the bounds of the presbytery of Albany, and sent him to the care of Dr. Nott, and their proceedings, with the entire confidence that Dr. Nott would take care of him, and that he would write to them in their next sitting, of his conduct. During the summer season, presbytery of New-Jersey set, and Doct. Nott wrote a short letter to them, and Mr. J. Price came to Newark with Mr. Cumming, with a call for him to preach in Schenectady. Mr. Cumming applied for a dismission from the presbytery of Jersey ; it was granted. Mr. Cumming's friends had the entire confidence that Doct. Nott would be a father to him, especially his parents. Doct. Nott was written to be a father to him, by his friends ; and Mr. Cumming was directed to go to Doct. Nott for counsel, and I believe he did, for he told me that Doct. Nott was a father to him ; and I heard him ask Doct. Nott, if he would give counsel, and what hours in the day he might come. Doct. Nott told him, " come whenever he wanted to ; at any time he was ready to give him his counsel."

In the spring 1816, Mr. Cumming and wife came to Newark, to see their parents and friends, and was discovered not to have his right mind, in preaching a preparatory lecture for Doct. Griffin, and I discovered it myself, and was very uneasy about it, and persuaded him and his wife to come to Albany with me in my sloop, as I had several passengers on board, at that time, and some professors of religion, which I calculated would keep him steady on his passage up ; but he behaved

with a good deal of levity, so much so, that even the people where we went on shore, took notice of it, and took him to be some young fop of a lawyer, instead of a minister, as they told me afterwards ; and I told Mr. Marvin and family that he was not in his right mind, and to persuade him to stay at their house, while he staid in Albany, and not to visit much, which they did. Mr. Marvin asked me if I did not think Mr. Cumming drank too much at these spells. I told him I was afraid he did, for I had noticed it myself that he had drank, some times, more than was prudent, but laid it to the state of his mind. I felt very uneasy about Mr. Cumming at that time, and I went to Schenectady to see Dr. Nott, and had an interview with him about Mr. Cumming, to see if he could not get a tour or mission for him, for I thought by travelling it might help his mind and settle it. But, afterwards, I understood, by my friends, in Schenectady, that Mr. Cumming was better, also, by Doct. Nott. I saw Mr. Cumming, sometime after, and had an interview, and I mentioned about his levity, and he said he was better, and spoke very feelingly, as though he knew he had been wrong. Last fall I understood that the first presbyterian church in Albany, was about calling Mr. Cumming from Schenectady, and I searched into the thing, and found it was 'so ; and I informed his parents and friends of it, who were all very much opposed to his coming to Albany, for they did not wish him to leave the care of Dr. Nott. His father said he had rather he would come home than to come to Albany. I was asked by several persons, about Mr. Cumming's character, and about preaching other men's sermon's ; which I said but very little about,

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except to the session of the church in Albany, which I thought my duty, for I knew it was against the will of his parents and friends that he should come to Albany ; and I communicated to Doct. Nott the same. Doct. Nott and myself told the session that it was not prudent to call Mr. Cumming, under all circumstances, at present ; in consequence they did not. His parents and friends rested very easy, supposed he was doing very well in Schenectady, till he wrote to his father, that he had a call to the 3d presbyterian church in Albany, and then they were uneasy. Mr. Cumming's father wrote to him, that he must take the advice of Doct. Nott and his christian friends, before he accepted the call. His parents did not know he was in Albany, till a little before I sailed from Newark, and were very uneasy ; expected there was, or would be, trouble. And as soon as I got to Albany I saw Mr. Cumming was in such a state that he could not reflect on what he was doing, that his mind was not right ; I therefore advised with Doct. Nott, and gave him my opinion that it would not be prudent for him to take his oath ; not that he would swear wilfully wrong, but that he might without reflecting on all the circumstances.

I have ever considered Mr. Cumming's moral character good. *Lewis Bosworth.*"

Capt. Bosworth's Examination continued.

Did you, or did you not, introduce Mr. Cumming to Dr. Nott's acquaintance, and, in the name and at the request of Mr. Cumming's father, put him under his care ; and did you tell Doct. Nott, at the time, that Mr. Cumming was deranged in your opinion, and in the opinion of his father ?

I did.

Have you, or have you not, been the continual medium of communication between Dr. Nott and Mr. Cumming's father, ever since he has been at Schenectady ?

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I have.

When you brought Mr. Cumming from Jersey, after his visit there from Schenectady, did you call on Dr. Nott, and request him to contrive some plan to get him on a mission, or, in some such way, remove him from his situation in Schenectady ?

I did.

Did you tell Dr. Nott, as the ground of this request, that he had been intemperate on his passage up with you ; and that when he had his deranged turns he would drink to excess ?

I stated it so ; I did believe it.

Did you call on Dr. Nott, last fall, and in the name of Mr. Cumming's father, request Dr. Nott to interfere, and, if possible, prevent Mr. Cumming's going to Albany ?

I did so.

Did you tell Dr. Nott that Mr. Cumming's father said he would rather take his son home, than to have him go to Albany ; and that, if he went, he feared it would be his destruction ?

Yes, sir.

Did you not call on Dr. Nott now, as soon as you could, after he came to this city, and beg him to try, if possible, to prevent Mr. Cumming's remaining in Albany, and to leave this and go down with you ?

Yes, sir.

Did you finally tell Dr. Nott that you was satisfied that Mr. Cumming was not now in his right mind, and did you beg Dr. Nott,

Mr. Chester's Trial.

2d Charge.

Testimony.

not to allow Mr. Cumming to take an oath ?
That was my opinion.

Are you a communicant in the church at Newark ?

Yes, sir.

Are you the intimate and confidential friend of Mr. Cumming's father ?

Yes, sir.

All the testimony recorded under the SECOND CHARGE, having been read and considered, *The court unanimously decided,*

Judgment
of the
court.

I. *That it has not been made out, on the part of the prosecution, that the Rev. John Chester did make, when in conversation with Mr. Mark Tucker, a charge of intoxication against the Rev. Hooper Cumming, as is charged in this charge.*

II. *That it has been made out, on the part of the defendant, that what he did tell Mr. Tucker, to wit : " That Marvin told him that Mr. Cumming had been under the influence of spiritous liquor, and so much so, that he considered it as imprudent for him to leave his house," was true. Whether, however, the defence set up for having told Mr. Tucker this, to wit : That it was told in confidence by the defendant, and for the purpose of obtaining further information and advice for the regulation of his future conduct, whether this defence amount to an entire justification, or not, depends, in some measure, on the knowledge which the defendant had at the time, of Mr. Marvin's having discharged the previous duty, which, as a christian, he owed Mr. Cumming, and of the success, or failure, with which it had been attended ; circumstances which had not been adverted to, by the defendant, in his pleadings, and concerning which nothing had appeared in evidence. No-*

tice was, therefore, given to the parties, and the court was opened for the receiving of testimony on these points.

Mr. Chester's Trial.

2d Charge.

U. Marvin.

Mod. Did you ever tell Mr. Chester, or not, that you had conversed with, and counseled the Rev. Hooper Cumming, on the subject of those levities, indiscretions, and irregularities in him, which you imputed to too free a use of spiritous liquor?

Additional testimony.

Wit. I do not remember that ever I did; I might, or might not.

J. Boardman.

Mr. Chester. Did you not hear Mr. Marvin say, in my presence, that he had conversed with Mr. Cumming, and, if so, what did he say?

Wit. I did hear him say so, if I recollect, at different times; and the answer from Mr. Cumming was, that you might as well undertake to stop the north-river, and turn it in a different course.

C. Bulkley.

Mr. Chester. Did you not hear Mr. Marvin say, in my presence, that he had conversed with Mr. Cumming; and, if so, what did he say?

Wit. I did; that he had frequently conversed with Mr. Cumming; and that the answer from Mr. Cumming was, that you might as well undertake to stop the north-river, and turn it in a different course. My impression is, it was before the rumour of Mr. Cumming's intemperance, either in the last of October, or the first of November.

The additional testimony taken and recorded under the SECOND CHARGE having been read and considered; the court were of opinion that the defence set up by the de-

Opinion of the court.

Mr. Ches-
ter's Trial.

2d Charge.

Opinion of
the moder-
ator.

fendant was good, and amounted to a justification. The moderator not being prepared to acquiesce in such a decision, wished for time to examine the testimony, before the judgment of the court was entered. Time was granted, and, having reduced his opinion to writing, he delivered the same in the words following :

“ Private offences are of two kinds. The one where the offence is against an individual ; the other, where the knowledge of the offence is confined to an individual, or to a few individuals. The one receives its denomination from its object ; the other, from its privacy.

“ An offence against *an individual*, though known to many, is still a private offence ; nor may the individual offended, take one step to bring the offender to a public trial, until the private and appointed means, for reclaiming him, have been tried, and have failed. The christian law, on this point, is explicit and imperative. *Matt. xviii. 15-17.*

“ Not the gaining the offender, by the offended, if the offence become notorious, will, however, prevent third persons from taking cognizance of the offence. The object of that cognizance, however, is not the reclaiming of the offender, but the making of the fact manifest to others, that he has been reclaimed. Where the interest of religion requires it, the confession of sin may be made as public as the knowledge of the sin confessed has become.

“ An offence against *society*, where the knowledge of the offence is confined to an individual, is a private offence ; and though offences of this sort do not appear to have been the precise object of the law referred to

in Matthew, still our duty, in relation to such offences, may, by fair analogy, be deduced from the provisions of that law. For if the *gaining* of the offender, be a bar to the further promulgation of a private, personal offence, it should seem that the gaining of the offender ought to be a bar to the further promulgation of a private offence, which is not personal. And if such an offence be promulgated, after the offender has been gained, some good reason for such promulgation, apart from the object of discipline, ought to be made apparent

Mr. Chester's Trial.

2d Charge.

Moderator's opinion.

“ The alleged intemperance of Mr. Cumming, at Mr. Marvin's, though not a *personal* offence, was, notwithstanding, a private offence, having occurred in retirement, and being known, at most, only to Mr. Marvin, his family and one or two confidential friends ; and, being a private offence, if Mr. Marvin had discharged his duty to Mr. Cumming, and received satisfaction from him, then there remained no further duty for Mr. Chester to perform. Nor ought the knowledge of the transaction to have been communicated to Mr. Chester, or recommunicated by him (on the supposition that satisfaction had been given) unless some reason existed therefor, other than the duty which was owed to Mr. Cumming. To prevent the first church in Albany from making an erroneous choice of a pastor, is the reason alleged for Mr. Marvin's making the communication which he did. This is a good and sufficient reason for Mr. Marvin, and it would be a good and sufficient reason for Mr. Chester, so far as respected any confidential communication, which he might have made to members of the first church in Albany. But it was not

Mr. Ches-
ter's Trial.

2d Charge.

Moderator's opin-
ion.

to any member of the first church in Albany, but to Mr. Tucker, a licentiate, residing in Schenectady, that the communication was made by Mr. Chester, and the reason for making it, is alleged to have been the obtaining of information and counsel for the regulation of his conduct. Now, if Mr. Cumming, having been admonished by Mr. Marvin, had already become repentant and reformed, Mr. Chester had no occasion for the information, or counsel sought, and, of course, no right to make the communication he did, to Mr. Tucker, when seeking it. Nor could any duty Mr. Chester owed Mr. Cumming, render it needful for him to consult or communicate with Mr. Tucker, relative to what had occurred at Mr. Marvin's, until he had first ascertained that Mr. Marvin had neglected his duty to Mr. Cumming, or that, having performed it, the performance had been unsuccessful. The ascertainment of either the one or the other of these facts, would alter the situation of Mr. Chester ; for, if he had become possessed of information that Mr. Cumming was living in sin, and had not been reprov'd, or, having been reprov'd, had not repented, then, indeed, there had devolved on him, unsought, a painful and difficult duty to perform ; before he entered on which performance, he might wish for further information, as well as for counsel and advice with respect to his own duty, arising out of the information already possessed ; and if he did wish for this, he had a right to seek it from any christian man in whom he placed confidence, and, especially, from any christian minister. Whether the individual consulted, was selected with discretion, or whether that individual made a

prudent, or an imprudent use of the trust reposed in him, is not now the question; but whether Mr. Chester had a right, at that time, and for the reason assigned, to make the communication. That right I conceive has not yet been made out, because the previous duty of Mr. Chester, out of which only the right in question is supposed to spring, has not been made out.

Mr. Chester's Trial.

2d Charge.

Moderator's opinion.

“ It has indeed been shown to the court, by Messrs. Bulkley and Boardman, that when Mr. Marvin communicated to the elders of Mr. Chester's church, the information of Mr. Cumming's alleged intemperance at his house, that he also communicated (Mr. Chester being present) the information of his having repeatedly expostulated with Mr. Cumming, to no purpose; and the time when this communication was made to the elders of Mr. Chester's church, is ascertained with tolerable accuracy. It appears however from the admission of Mr. Chester, that Mr. Marvin had previously communicated to him the alleged fact of Mr. Cumming's intemperance; but, whether Mr. Marvin also communicated, at that time, to Mr. Chester, the alleged fact of his own ineffectual admonition of Mr. Cumming, Mr. Marvin declares, on oath, that he does not remember; and the court therefore have no evidence that he did. Now whether Mr. Chester communicated to Mr. Tucker the account he had received of Mr. Cumming's intemperance, before, or after, the communication made by Mr. Marvin to Mr. Chester's elders, and in his presence, has not been ascertained; and yet the ascertainment of this is of consequence in making a decision. Mr. Tucker has been in court and could be again called; and if it should

Mr. Ches-
ter's Trial.

2d Charge.

Moderator's opin-
ion.

appear that the communication of Mr. Chester to him was after, and *not before*, Mr. Marvin's communication to Mr. Chester, of his own repeated and ineffectual endeavours to reclaim Mr. Cumming, then Mr. Chester's defence will be complete ; for it is not to be disputed, if the information communicated by Mr. Marvin to Mr. Chester, was of such a nature as to impose upon him the performance of any duty to Mr. Cumming, that he had a right to make such communications, and take such counsel as was deemed requisite for the due performance of the duty thus imposed."

The objections, stated in the opinion of the moderator, having been considered, and notice being given to the parties, the court was again opened for the taking of Mr. Tucker's testimony on this point.

Mr. Tucker.

Additional
testimony.

About what time did Mr. Chester make the communication respecting Mr. Cumming's intemperance at Mr. Marvin's ?

As nearly as I recollect, it was about the middle, or last of November ; I think the last of November.

The additional testimony of Mr. Tucker, taken and recorded under the second charge, having been read and considered, *the court unanimously decided,*

Judgment
of the
court.

III. *That the defence set up for having told Mr. Tucker what Mr. Marvin had said relative to Mr. Cumming's intemperance at his house, to wit: That it was told by the defendant in confidence, and for the purpose of obtaining further information and advice for the regulation of his future conduct, was a good and sufficient defence, amounting, alike in equity and law, to a justification.*

Inasmuch as there had been an entire failure, on the part of the prosecution, to establish against the defendant, the making a charge of intoxication against the Rev. Hooper Cumming, the court unanimously decided,

Mr. Chester's Trial.

2d Charge.

Judgment of the court.

IV. *That the charge of falsehood, for denying the same, having nothing to support it, fell of course.*

THIRD CHARGE.

Common fame charges the Rev. John Chester, with falsehood on the examination at Schenectady, before Doct. Nott, Doct. Hosack, and Mr. McCrea, relative to an interview with the Rev. Hooper Cumming, I Hutton, and U. Marvin, in Albany, on the third of January 1817, to wit: Telling the said committee, in Schenectady, that he told Mr. Cumming at the aforesaid interview in Albany, that Mr. Marvin had told him, that he saw Mr. Cumming drunk at his house.

3d Charge:

Testimony

Dr. Nott, sworn on the part of the prosecution.

Dr. Nott's testimony.

Com. Did Mr. Chester say during his examination before the committee on J. L. Winne's resolution, that he told Mr. Cumming, at the aforesaid interview in Albany, that Mr. Marvin told him that he saw Mr. Cumming drunk at his house?

Wit. Not in my hearing.

Com. What did Mr. Chester say, during his examination before that committee, relative to Mr. Cumming's intemperance at Mr. Marvin's?

Wit. The substance was this; that Mr. Marvin told him that he had seen Mr. Cumming in such a state, from the improper use of liquor, as he supposed, that he did not like to permit him to go out of his house. Mr. Chester, in reply to Mr. Cumming's question,

Mr. Chester's Trial. said that he did not say that Mr. Marvin told him that you was so drunk, but, that
 3d Charge. you was in such a situation from the improper use of liquor, as he supposed, that he did not
 Testimony. wish you to go out of the house.

Cross Examination.

Def. Was the committee on Mr. Winne's resolution, a confidential committee ?

Wit. It was.

Def. Did you communicate to any person, previously to the presenting the information against Mr. Chester, on Friday, what he said before the committee on Wednesday preceding ; if so, who was that person ?

Wit. I did not to my knowledge.

Def. When you called, with Mr. Kelly, on the commissioners, Messrs. Lucas, Eaton and Graham, at Given's, what reason did they assign for presenting the information against Mr. Chester ; and when, why, and by whom, did they say it had been determined that it should be presented ?

Wit. I do not know that I can answer distinctly. My impression is, that they spoke kindly of Mr. Chester, and one of them said, it was understood by our friends in Albany, that if Mr. Cumming's case was acted upon, Mr. Chester's would be also ; but that it was not finally determined, until, according to my impression, the last night, or the night before. But that if one was tried, the other would be also.

Def. When the committee on the information against Mr. Chester, first met in Albany, February 27th, did any person inquire what Mr. Chester had said on his examination before the confidential committee, on Mr. Winne's resolution in Schenectady ? If so, who was that person, and what reason did

he assign for making that enquiry, and what answers did the committee give?

Mr. Chester's Trial.

Wit. When the committee met in Albany, Mr. Warren appeared, and asked me if Mr. Chester had not stated before that committee, that Mr. Marvin had told Mr. Chester, that Mr. Cumming was drunk at his house. I told Mr. Warren that that committee was confidential, and that I did not feel at Liberty to state any thing respecting it. To this gentleman I added, that if he would go with me to Mr. Chester, I would answer it ; but not otherwise, as I considered it private. The reason Mr. Warren assigned, was that some person had told him that Mr. Chester had said before that committee, that Mr. Marvin told him that Mr. Cumming was drunk at his house.

3d Charge.

Testimony.

Def. Did the committee understand, at this their first meeting, that previous to the presenting of the information against Mr. Chester, it had become common fame in Albany, that he had told a falsehood on his examination in Schenectady, before the committee on Mr. Winne's resolution ; and if so, from whom did they understand this ?

Wit. The committee were informed by the commissioners, or some one of them, that it was common fame among their friends ; or words to that effect.

Def. Did the committee, on this information against Mr. Chester, afterwards learn, from any other individual, or individuals, than the four already named, that, previously to the presenting of the information against Mr. Chester, it had become common fame, that Mr. Chester had told the falsehood alluded to, before the committee on Mr. Winne's resolution in Schenectady?

Mr. Chester's Trial.

Wit. No they did not.

3d Charge.

Testimony.

Def. From whose statement did the committee, after their first report was recommit-
ted, take this additional charge of falsehood into the said report ; and at whose instance was it afterwards amended into its present form ?

Doct. Hosack's testimony.

Wit. On the statement of Mr. Cumming, and at the instance of Mr. Cumming.

Doct. Hosack, sworn on the part of the prosecution.

Com. Did Mr. Chester say, during his examination before the committee on Mr. J. L. Winne's resolution, that he told Mr. Cumming, at the aforesaid interview in Albany, that Mr. Marvin told him that he saw Mr. Cumming drunk at his house ?

Wit. He did not. He mentioned that Mr. Marvin had told him that he had seen Mr. Cumming in that situation, that he thought it prudent to keep liquor out of his way, and on another occasion, that he did not think fit to permit him to go out of his house.

Cross Examination.

Def. Was the committee on Mr. Winne's resolution, a confidential one ?

Wit. I viewed it so.

Def. Did you communicate to any person, previously to the presentment of the information against Mr. Chester on Friday, what he had said before the confidential committee on the Wednesday preceding ? If so, who was the person ?

Wit. Not as I recollect.

Dr. Willard, sworn on the part of the prosecution.

Com. Do you know any thing concerning this third charge ?

Wit. I know nothing.

Mr. Eights, sworn on the part of the pro-
secution.

Mr. Ches-
ter's Trial.

Com. Do you know any thing concerning
this third charge?

Wit. Nothing.

Testimony.

By Mr. Cumming. Did not Mr. Chester,
on a certain occasion, declare to you that he
heard Mr. Cumming preach, at Milton, the
Rev. Mr. Channing's sermon?

Wit. He did not.

Hon. Smith Thompson, sworn on the part
of the prosecution.

Com. Do you know any thing concerning
this third charge?

Wit. I do not.

*Hon. Chancellor Kent, Mr. Charles R.
Webster, Mr. Th. V. W. Graham, Mr.
Warren, and Mr. Stewart*, sworn on the part
of the prosecution.

Com. Do you know any thing of this third
charge; if so, what do you know?

Wit. I know nothing.

Mr. John M'Crea, sworn on the part of the
prosecution.

Mr. J.M'
Crea's tes-
timony.

Com. Did Mr. Chester say, during the ex-
amination before the committee on Mr. J. L.
Winne's resolution, that he told Mr. Cum-
ming, at the aforesaid interview in Albany,
that Mr. Marvin told him that he saw Mr.
Cumming drunk at his house?

Wit. I have no recollection that he said he
was drunk.

Com. What did Mr. Chester say, during
his examination before that committee, rela-
tive to Mr. Cumming's intemperance at Mr.
Marvin's?

Wit. I think he said that Mr. Marvin said,
that Mr. Cumming was in such a situation, in
consequence of having used liquor, that he

Mr. Ches-
ter's Trial.



3d Charge.

Testimony.

Mr. J.T.B.
Graham's
testimony.

thought it not prudent for him to go abroad.

Cross Examination.

Def. Did you tell any person, that I had told a falsehood before that committee, of which

you was a member ?

Wit. I did not.

Mr. J. T. B. Graham, sworn on the part of the defendant.

Def. Do you know who reported in Albany, between Wednesday and Friday of the week presbytery sat in Schenectady, that Mr. Chester had told a falsehood before the committee on Mr. Winne's resolution ?

Wit. I do not particularly; it was a subject of general conversation.

Def. Was you in Albany between Tuesday and Friday ?

Wit. I was

Def. Did you hand the charges to the committee on Mr. Chester's case, in Albany ?

Wit. It was the act of the commissioners.

Def. Did you arrange those charges and put them into the form in which the committee received them ?

Wit. It was the act of the commissioners. But I understood that it was not to be made use of, at all, except for the accommodation of the committee, and at their request.

Examination of Mr. Eaton, sworn on the part of the defendant.

Mr. Ea-
ton's testi-
mony.

Def. Did you hear, before you signed the paper, containing information against Mr. Chester, that Mr. Chester told a falsehood to the committee appointed on Mr. Winne's resolution, which was appointed to inquire into the common fame report against Mr. Cumming, which committee consisted of Docts. Nott and Hosack, and Mr. M'Crea ?

Wit. I did.

Def. Who told you so ?

Wit. It appears to me it was my colleagues, the other members of the commission.

Mr. Chester's Trial.

3d Charge.

Mr. Cum. What was the ground-work of your application, as one of the commissioners on behalf of the 3d presbyterian church in this city, to the presbytery, for the appointment of the committee, to investigate Mr. Chester's conduct ?

Testimony

Wit. It was from the reports abroad ; what I had from almost every mouth.

Mr. Cum. Did Mr. Chester, while attending the presbytery in Schenectady, discover to you conduct indicative of a state of hostility toward Mr. Cumming ? If so, what was that conduct ?

Wit. He did. The first part of Mr. Chester's conduct appeared very sincere, until after Mr. Winne introduced his resolution. After this, we ascertained for a certainty, from his vote in presbytery, and his after conduct, that he was opposed to us, and endeavoured, by introducing another subject, which I supposed was irrelevant, to frustrate our plans. Next morning after Mr. Winne introduced his resolution, at Mr. Given's, in Schenectady, Mr. Chester observed that Mr. Cumming's conduct, in preaching other men's sermons, was such that he did not think he should hesitate to make it public.

Mr. Cum. Was not Mr. Chester's inconsistent conduct, as you viewed it, relative to Mr. Cumming's settlement in Albany, the principal reason why you, as one of the commissioners on behalf of the third church, applied to presbytery for the appointment of a committee to investigate his conduct ?

Wit. It was indeed, sir.

Mr. Ches-
ter's Trial.

3d Charge.

Def. How and by whom was the subject of Mr. Cumming's conduct in preaching other men's sermons introduced ?

Wit. I came in after it was introduced.

Def. Who was present when this was said ?

Wit. I believe Mr. Warren, Mr. Graham, Mr. Lucas, Mr. Fry, and Mr. Stimpson.

Dr. M'Au-
ley's testi-
mony.

Dr. M'Auley, sworn on the part of the defendant.

Def. Was you present before the committee on Mr. Winne's resolution, when Mr. Chester was present ?

Wit. Yes, sir.

Def. Did you hear Mr. Chester state in the presence of that committee, what Mr. Marvin told Mr. Chester concerning Mr. Cumming's intemperance at his house ; and what Mr. Chester told Mr. Tucker ; if so, what was the amount of what Mr. Chester said ?

Wit. The amount of what Mr. Chester said, was, that Mr. Marvin had told him that he, Mr. Marvin, had seen Mr. Cumming at his house, in a state unfit to go out ; and that he, Mr. Marvin, had prevented him from going out, for fear of exposing himself.

Def. Did you hear Mr. Cumming ask Mr. Chester, in the presence of that committee, whether Mr. Marvin told him that Mr. Cumming was drunk, or intoxicated at his house ; if so, what was Mr. Chester's answer ?

Wit. His answer was, I think, that he had never used the word drunk, or intoxicated ; but he said, that he was in a state unfit to go out.

Def. Did you, between the time Mr. Chester and you were together before that committee, on Mr. Winne's resolution, and the rising of the presbytery, tell any person what

Mr. Chester said before them in your hearing; and if so, who was that person? Mr. Chester's Trial.

Wit. I do not remember having told any person. 3d Charge.

All the testimony, taken and recorded, under the THIRD CHARGE, having been read and considered, *the court unanimously decided.*

I. *That the falsehood charged against the defendant, when on his examination before Doct's Nott and Hosack, and Mr. M'Crea, had not been, on the part of the prosecution, made out. On the contrary, the court unanimously decided,* Judgment of the court.

II. *That it had been fully made out, on the part of the defendant, that this charge was itself a falsehood.*

The court therefore, unanimously, acquit the Rev. John Chester, of each and all the charges brought against him; there having nothing appeared, during the whole trial, to impeach his integrity, or in the least to weaken their confidence in him, either as a christian, or as a minister. And this court are constrained to add, as the guardians of character and the supervisors of morals in their churches, that no justifiable cause, for the commencing of this prosecution, has appeared.

The court are aware that an apology is suggested (in behalf of the informers on record against Mr. Chester, as well as in behalf of the committee who reported on their information,) in that previous clamour raised, and that factitious excitement given to a portion of community, by another process which had been already commenced. Still, however, individuals rights are sacred and ought never to be violated, or even to be put in jeopardy by judicial bodies, to satisfy the demand of popular feeling. And this court cannot close the

Mr. Tucker's Trial.

record of the present trial, without leaving on it their marked disapprobation, of all such groundless and vexatious prosecutions, which tend alike to the disturbing of individual peace, and the subversion of public morals.

ALBANY, APRIL 10th, 1817.

THE trial of the Rev. John Chester being closed, the committee appointed to conduct the trial of Mr. Mark Tucker, informed presbytery they were ready to proceed. Mr. Tucker stated that he also was ready.

The stated clerk informed presbytery, that he had forwarded citations to all the witnesses whose names were on the list of witnesses supplied by the informers, as the same was handed him by the committee, viz.

Witnesses.

Rev. J. Chester, Rev. T. M'Auley, LL. D. Mr. Crane, Mr. Lee, Mr. Hutton, Mr. Platt, Mrs. Platt, Mr. Wisner, Mr. Davis, Mr. Clark, Mr. Adams, Mr. Crosby, Mr. M'Queen, Mr. Strong, Miss H. Peck, Miss L. Peck, Mr. Marvin, Mrs. Marvin, Mr. Basset, Mr. Duncan, Mr. Kent, Mr. Lucas, Mr. Johnson, Mr. Corning, Mr. Bliss, Mr. Eldridge, Dr. Burritt, Rev. Dr. Coe, Mr. Kellogg. And that he had cited in behalf of Mr. Tucker and at his request, Mr. Schermerhorn.

The charges were then read to Mr. Tucker, after which the moderator addressed the court and the defendant on trial, in the words following :

Moderator's Address.

“ *My Brethren,*

“ The trial on which we are now entering, is of the same general character as the preceding trial, and must, during the investigation, be governed by the same general principles ; but one thing occurs, in addition

to what has already been said, deserving of notice.

Mr. Tucker's Trial.



Modernator's Address.

“ The mere delivering of other men's sermons is not necessarily criminal ; and because it is not, the mere circulating of a report thereof, though false and therefore sinful, is not necessarily slanderous. To render the delivery of another man's sermon criminal, he who does this must be under some moral obligation not to deliver it. And in circulating a report of a man's delivering another man's sermon, it must be expressed, or it must be implied in the manner of circulating ; or it must be inferable from the office or situation of the person concerning whom it is circulated, that the act alleged was improper, to give to the circulation of the report itself, the character of slander.

“ To say that a school boy had recited as an exercise memoriter a part of a sermon ; or that a layman had done this in a circle of friends to show the strength of his memory, though false, and therefore criminal, would not be slanderous. But to say falsely, that a minister had on the sabbath day, and in public, preached the sermon of another man, besides being false, would also be slanderous.

“ That it is slanderous falsely to circulate a report of a minister's preaching other men's sermons, we have already decided by the sanctioning of a process in which that act is charged as injurious ; nor can there be any doubt as to the soundness of that decision.

“ For were it declared allowable by our judicatures, for their members to preach at pleasure their own, or the sermons of other men ; and were the declaration published to our churches, tho' this would, thereafter, take away much of the moral turpitude which

Mr. Tucker's Trial.



Moderator's Address.

now attaches to the action, still the declaration, itself, would inflict a wound, both on literature and religion, deep, lasting, and difficult to heal.

“ To say nothing of the danger to which the doctrines of our church would be exposed, were her ministers allowed, instead of studying the word of God for themselves, to beg, or borrow, or, take their discourses ready made from the booksellers shelves, such a license would tend to discountenance industry ; to paralyze exertion, and reduce, in the public estimation, so far as sermonizing was concerned, the ignorant and the learned, the diligent and the slothful, the foolish and the wise, to the same unenvied level. Then, grace apart, all the requisites for the due performance of the public duties of the ministerial office, would be memory and speech, together, with sufficient education to read and write. Because, by supposition, all that would be required of the licensed performer, would be, to assume the manner and repeat the language of other men. Though there were no guilt, there would be much degradation in such a state of things.

“ But this is not the light in which we are called to view this question. We have no such office as *readers* or *recitors*, nor any such legalized exercise in our churches, as recitations. We license and we ordain ministers, not to repeat the discourses of others, but to prepare and deliver discourses of their own. Hence our examinations to ascertain whether they are qualified for the performance of this high office ; and hence our solemn charge to them to be diligent in study, as well as fervent in spirit. So intelligible and so well defined is the obligation imposed on the presbyterian

minister to preach his own compositions, that whenever he preaches the compositions of others, he can only absolve himself from the imputation of deception by an avowal at the time, of the fact. For from the tenure of his office, his auditors have a right to presume, unless he informs them to the contrary, that the discourses he delivers to them from the pulpit, are substantially his own productions, and not the productions of another. I say substantially : because by common consent, (and this constitutes the law on this article, without the transgression of which there is no deception,) it is allowed, not indeed, in printed, but in spoken discourses, to appropriate an incidental thought, or transfer some peculiar expression, without interrupting the unity of the argument, by indicating the source from which it was drawn. It is allowed to take at pleasure, even larger portions, without express quotation from authors known to be in general use. It were quite superfluous to refer to Matthew or Isaiah, or to any other writer, either sacred or profane, so universally familiar as to be recognized without such reference ; and even where the writers are not familiar, if there be any thing in the matter or in the form of what is taken therefrom, that indicates its transfer, (as is often the case with history and poetry) it were unnecessary to indicate it. Nor is it ordinarily expected in the discussion of hackneyed subjects, that the materials are original. But even on these subjects, and from whence-soever the materials are drawn, it is expected that the fabric into which they are wrought is, and of right it ought to be, unless the contrary is announced, the speaker's own.

“ Such is the implied obligation under

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 Moderator's Address.

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Moderator's Address.

which every minister in our connection preaches. Express and voluntary obligations may indeed be superadded ; when the crime of plagiarism assumes a bolder type and the slander of having falsely imputed it a deeper malignity. Indeed the sanctions of official duty apart, it is understood that what a man publishes under his own name, or delivers in his own place (unless it be in the theatre, the recitation room, or in some other situation where the act explains itself) is, and therefore of right ought to be his own.

“ Hence the disgrace every where attached to plagiarism. It sinks the character of an under graduate, and even of a school boy, to attempt to pass off as his own the productions of his play fellow. The reason is obvious. It is the duty of every accountable being, to be candid and honest ; and an attempt to deceive, under whatever disguise it is made, always crosses our moral feelings.

“ But especially does this cross our moral feelings, when we meet with it in the teachers of religion, and during the service they perform at the altar of God. Here, if any where, we expect simplicity and sincerity ; actions as well as language that lie not.

“ Almost every other virtue bends to circumstances ; but truth, like justice, is unalterable and eternal ; nor can there be a continued departure from either without weakening the moral principle, and giving a hue to the general character ; thus he who loses his regard for truth in one situation will not long feel its binding obligations in another ; and he who deceives on the sabbath day, will soon find himself betrayed into deception on other days. Indeed, so many disguises and equivocations are requisite, to give effect to

any one act of deception, that a man who ventures on such a course, places his character for veracity in jeopardy ; and the full effect on community of upholding and sustaining in office false and faithless teachers, even of religion itself, is not easily to be anticipated.

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“ Such a slander therefore as is charged in this prosecution, strikes at the honor of religion, by striking at the honor of the teachers of it. And there are few more cruel or more effectual methods of traducing a minister of the gospel, than by falsely reporting against him, that he preaches not his own but other men's sermons. It tends directly to impeach his talents or his virtue ; to weaken his respectability and influence, and render him an object of pity or contempt ; it does even more than this, it excites suspicion generally ; it tends to embolden the profane, and to lessen men's reverence for religion itself, by lessening their reverence for its accustomed teachers. Falsely to spread such a report, is therefore slander, and to attempt to justify the spreading of it, is an aggravation of that slander.

“ If therefore, sir, you have said ought that is not true, or which the occasion did not require to have been said ; or ought which, though you believed it true, you have now reason to disbelieve, you will, I trust, ingenuously acknowledge it, and spare us the inconvenience and yourself the injury, of a formal trial.”

To which Mr. Tucker replied.

“ Sir,

“ I have nothing to acknowledge touching my conduct in the points at issue before you, except that common imperfection inci-

Mr. Tucker's Trial.

dent to our nature, and which is attached to all I say or do.

Mr. Tucker's pleadings.

“ Whether the clamor of persecution against another individual, and in which it has been said with so much assurance, that I was engaged ; whether this clamor has been artfully raised as a cover, to conceal from the public eye, the measures that were secretly taking to impeach my veracity and destroy my reputation, lest my testimony should on some future occasion appear against him, I will not undertake to determine.

“ I am but a young man and have had but little experience in the affairs of this world. To me, however, the *time*, the *manner*, the *nature* of the prosecution commenced against me, and above all, the immense pains that have been taken to forestall public opinion, and bring the community in anticipation of my trial, to pronounce me guilty, are circumstances which have, in my eye, a very suspicious and ominous appearance.

“ Character is as dear to the young man, who as yet is friendless and unknown, as to him who has risen into notice, and is basking in the sunshine of popular favor ; at least, the young man is entitled to an impartial trial, and ought not, in a christian community, to be condemned unheard.

“ If I have intentionally said ought that is false, or slanderous of Mr. Cumming, let me be condemned. I am sensible that a *liar* ought not to be commissioned to preach the gospel of truth ; or having been partially commissioned, that his step should be arrested before his foot has passed, and polluted by passing the threshold of the temple of God.

“ But, if what I have said is true, and if

I have said it only on fit occasions, I am yet to learn that on that account, to be condemned ; for I am yet to learn that it is a crime in a hearer, when his minister delivers, officially, on the sabbath day from the pulpit, after solemn prayer to God, a discourse which that hearer afterward reads in print at home ; I am yet to learn that it is a crime for that hearer to say, on all fit occasions, that he has read that sermon. Preaching other people's sermons is a public offence, and the public have a right to know it.

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“ There has been more than one instance in Schenectady, of little children having read, in print what they had heard preached from the pulpit on the same Lord's day. There has been more than one instance in Schenectady, in which, without any design, the same sermon preached on the sabbath day, has been read in the family and at the domestic altar, either immediately before, or immediately after it was preached. And, though in one instance, the reading of a volume of sermons which had been commenced in a family, was suspended to prevent the children of the family from knowing that their minister continued to preach from it ; I did not understand that the parents, though they were professors of religion, told their children that it was criminal to say they had read what they had already read in that volume.

“ If a different morality prevails in an ecclesiastical court, a morality that allows the licentiate to be wantonly traduced, and falsely and maliciously accused with impunity, but which stifles, in behalf of the ordained minister, even the voice of truth itself, so that facts which occurred publicly and in the face of day, may not be prudently and privately

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stated to those who ought to know them, lest such a statement would lead to a disclosure of fraud and shorten the career of falsehood and duplicity ; if this be the morality that prevails in ecclesiastical courts, I have yet to learn that it is so. And though I should be condemned by the rules of such a morality, I should still feel that I was justified in the eye of God and by the conscience of man.

“ Without any further remarks, *I specifically plead :*

1. With respect to the FIRST SPECIFICATION in this first charge, “ *the industrious circulation of the report of Mr. Cumming's intoxication at Mr. Marvin's,*” and with respect to his “ *drunkenness,*” as charged in the fourth allegation under the third charge.

1. I DENY, that I have industriously circulated either, or circulated either *at all* in the very terms and forms charged.

2. Though I deny this, I ADMIT, (for I despise equivocation, and will not attempt to shelter myself under a peculiar form of expression,) *I admit*, that I have, on different occasions, been placed in such a situation, that I believed it to be my duty to speak in confidence to different persons, and to some of the witnesses named in this cause, freely, of the intemperance of the Rev. Hooper Cumming, both at the house of Uriah Marvin. in Albany, and also of his intemperance in Schenectady ; and my defence is, that I believed what I said was true ; I still believe what I said was true, and I now claim the right of presenting before this court the whole evidence of its truth, and of all the circumstances under which I have said it, as my justification for saying it.

1. “ With respect to the SECOND ALLEGATION

in *this first charge*, to wit: "*preaching other people's sermons*," I DENY, that I have *indus- triously* circulated this report.

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er's Trial.

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ings.

2. "Still, however, I ADMIT, that I have con- versed freely, and with some of the witnesses named, relative to the report of Mr. Cum- ming's having preached other people's ser- mons, and that when interrogated, I have expressed my belief of the truth of that re- port; and that I have, in some instances com- municated something of my own knowledge of his having preached other men's sermons. But for all I have said, (and I might have said much more than I have) my defence is, that the report itself, in the fullest sense in which I have spoken of it, *is true*, and was, when I spoke of it, *notorious*

"If this be not the case, if I have commu- nicated as report, or said of my own know- ledge, aught of the Rev. Hooper Cumming's preaching other people's sermons which is not true, and which I cannot prove to this judi- cature to be true, and proper under all cir- cumstance, to have been said, let me be con- demned.

II. "With respect to the SECOND CHARGE, the charge itself is a falsehood. Mr. Chester was my author of the report of Mr. Cum- ming's intemperance at Mr. Marvin's; and though I now regret that I gave up my author to Mr. Cumming, I shall now prove that he was so.

III. "With respect to the DECLARATION, charged in *this third charge*, to wit: *except the Marvin business, I never opened my lips against you*;" I DENY, that I have made that declaration; and if it is not proved that I did, the falsehood predicated falls of course.

1st. *Specif.* With respect to the *first alle-*

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gation of slander under it, at Mr. Marvin's, *it is false*, and it will not appear in proof.

2d. Specif With respect to the *second allegation* of slander charged, in conversation with the Rev. Dr. Coe, Dr. Burritt, Mr. Kellogg and counsellor Bliss, it is false, and its truth will not appear in proof.

3d. Specif. With respect to the *third allegation* of slander ; though, as I have already admitted, I conversed freely with Mr. Crane and Mr. Lee, relative to Mr. Cumming's intemperance, and his preaching other men's sermons, it was confidential ; the motive was good, and the occasion, as will appear, required it.

4th. Specif. “ With respect to the *fourth allegation*, though (as I have already admitted) I have spoken freely at different times, with several of the persons named, relative to Mr. Cumming's intemperance and plagiarism, still my defence is, that all I have at any time said, was true was said to confidential friends, or was common fame at the time of saying it, and that the occasion justified me in it.

“ I know not what testimony it is expected will appear against me. I was not present with the committee during their examination of witnesses ; nor have they thought proper to communicate to me the information which they are in possession of, and which, if it had been consistent, I would have thought it kind in them to have communicated. The witnesses are taken from the family with whom I board, the friends at whose houses I have lodged, and my own inmates and companions at home ; not one of whom, I presume, will be found to have communicated a single fact concerning Mr. Cumming, as coming from

me ; nor can I anticipate the reason why they are cited, unless it be on suspicion, because they are my intimate friends : and with the hope, that during their examination, it would appear that something had been said by me concerning Mr. Cumming, in the silence of retirement, and in the confidence of friendship, that might have better not been said. Yet I wish every individual to come forward, and state to the extent of his knowledge, what has been said relative to this subject.

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Mr. Tucker's pleadings.

“ I am now ready for my trial ; and I have but one request to make, it is this : *that the whole truth may come out.*

“ I shall avail myself of no technical advantages (which I might do, considering the manner in which some of the charges are brought against me) to narrow the field of enquiry ; and I request that the committee may not be permitted to avail themselves of any. I have suffered long enough in the eye of the public from false, or partially disguised statements, and I fondly hope, I have at length reached a tribunal, where not only the truth, but the whole truth may be spoken.”

Mr. Tucker having closed, the court proceeded to take the testimony on the respective charges in their order.

FIRST CHARGE.

1st Charge.

Common fame charges Mr. Mark Tucker with unchristian conduct, by an industrious circulation of reports against the Rev. Hooper Cumming, to wit : Intoxication at Mr. Marvin's, and preaching other people's sermons.

Dr. Coe's Testimony.

Examination of Dr. Coe, sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has industriously circulated, or circulated at all,

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1st Charge.

Testimony.

the first report charged in this first charge, and in the unqualified terms in which it is charged, to wit : *Intoxication at Mr. Marvin's ?*

Wit. I do not.

Com. Has Mr. Tucker told you any thing relative to the report of Mr. Cumming's intemperance at Mr. Marvin's ; if so, when, where and what ?

Wit. I have no recollection that Mr. Tucker said any thing on the subject.

Com. Do you know that Mr. Tucker has industriously circulated the second report, charged in this first charge ?

Wit. I do not ; I am under the impression, however, that Mr. Tucker has told me, that he has heard Mr. Cumming preach in Schenectady, sermons that were not his own. Such impressions were made from conversations in various quarters.

Dr. Corning, Wm. Bliss, Esq. Mr. Hart, were respectively introduced and sworn, on the part of the prosecution, but knew nothing concerning either of the charges.

Mr. I. Hutton's testimony.

Mr. Isaac Hutton, sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has *industriously* circulated, or circulated at all, the first report charged in this first charge, and in the unqualified terms in which it is charged, to wit : *Intoxication at Mr. Marvin's ?*

Wit. No, sir.

Com. Did Mr. Tucker ever tell you any thing relative to the report of Mr. Cumming's intemperance at Mr. Marvin's ; if so, when and what did he tell you ?

Wit. He has ; but he told me after it had been communicated by him to Mr. Cum-

ming, in the presence of Dr. M'Auley, he told me that Mr. Chester told him, that Mr. Cumming had been intemperate (or words to that effect) at Mr. Marvin's. That it had been communicated to one of Mr. Cumming's elders, who had told Mr. Cumming; and that Mr. Cumming had called upon him in the presence of Dr. M'Auley.

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1st Charge.

Mr. I. Hutton's testimony.

Com. Do you know that Mr. Tucker has industriously circulated the second report, charged in this first charge, to wit: preaching other people's sermons?

Wit. I do not: I believe that Mr. Tucker has told me that Mr. Cumming has preached other people's sermons.

Cross Examination.

Def. Was it from Mr. Tucker you first heard the report of Mr. Cumming's intemperance in Schenectady?

Wit. No, sir.

Def. How came Mr. Tucker to have the conversation he had with you; was it sought on his part, or did you enquire of him concerning the reports in circulation, relative to Mr. Cumming?

Wit. Being impressed with the importance of having a suitable minister in this place, I considered it my duty to make all possible enquiry with regard to Mr. Cumming, who was then talked of; I asked Mr. Tucker what was the course of Mr. Cumming's conduct in Schenectady. He did tell me of the reports of his intemperance in Schenectady; but the particulars I cannot tell. He never told me any thing that I recollect but what I sought.

Def. Was not this conversation confidential, and what Mr. Tucker said to you, was it not said to you as an elder of the church?

Mr. Tucker's Trial.

1st Charge.

Wit. It was so.

Mr. Haliday. If it was confidential and treated so, how came you to be called before this court to give it in evidence ?

Rev. John Chester's testimony.

Wit. My name was on the list of witnesses furnished, as I presume, by the complainants.

Examination of Rev. John Chester, sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has industriously circulated, or circulated at all, the first report charged in this first charge, to wit : *intoxication at Mr. Marvin's* ?

Wit. I do not.

Com. Do you know that Mr. Tucker has industriously circulated the second report charged in the first charge, to wit : *preaching other people's sermons* ?

Wit. I do not : nor do I know whether Mr. Tucker ever told me, that Mr. Cumming had preached other people's sermons, or not. I have conversed freely with him ; and I may, or may not have heard him.

Cross Examination.

Def. Do you know any thing of Mr. Cumming's preaching other people's sermons ; if so, what do you know ?

Wit. I know that he did preach at Milton, before this judicature, a sermon taken from one which I heard the Rev. C. Channing preach at Dorchester, December, 1808.

Mr. B. B. Wisner's testimony.

Examination of Mr. Benjamin B. Wisner, sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has *industriously* circulated, or circulated at all, the first report charged in this first charge, and in the unqualified terms in which it is charged, to wit : *intoxication at Mr. Marvin's* ?

Wit. I do not.

Com. Did Mr. Tucker ever tell you any

thing relative to the report of Mr. Cumming's intoxication at Mr. Marvin's, previous to the interview between him and Mr. Tucker at Mr. Platt's ; if so, what did he tell you ?

Mr. Tucker's Trial.

1st Charge.

Testimony.

Wit. I think he did not.

Com. Do you know that Mr. Tucker has industriously circulated the second report, charged in this first charge, to wit : preaching other people's sermons ?

Wit. I do not. Mr. Tucker informed me that Mr. Cumming preached Mr. Barrow's sermon on this text, "*not my will, but thine be done.*" Afterwards, I called at Mr. Tucker's room, and read in print, a sentence which I had been informed by another person, was in Mr. Cumming's sermon.

Cross Examination.

Def. Do you know any thing of the truth of Mr. Cumming's preaching other people's sermons ; if so, what do you know ?

Wit. I have heard Mr. Cumming preach several sermons, which afterwards, I have read in print. One from Luke ii. 34-5, of Dr. Griffin's, with the exceptions of a few sentences, and in some places of a few words, (applicable only to the occasion on which it was originally preached) verbatim. There was nothing added to the sermon that I recollect. He began with the second paragraph and preached it to the bottom of the 22d page, I think. I heard Mr. Cumming preach from the text, "*It is appointed to all men once to die,*" &c. which I afterwards read in a volume of Logan's sermons, verbatim, with these exceptions, which I recollect : Mr. Cumming put one of the sentences of Logan into the mouth of J. Butler, lately deceased, as addressing the students. I heard Mr. Cumming preach from Dan. vi.

Mr. Tucker's Trial.

1st Charge.

Testimony.

10, I think, a sermon which afterwards I read in bishop Horne's discourses, and found it to be the same, with a few verbal alterations, which I do not recollect. I heard Mr. Cumming preach from this text, "*what think ye of Christ,*" and read it immediately after I went home, in Robert Robinson's discourses. Mr. Cumming began nearly at the bottom of the fourth page of the sermon in the edition I read, and went on, verbatim, nearly to the close; except that he had left out nearly one page, one or two sentences and some words: towards the close, he introduced that part of the sermon which, in the printed copy, preceded the place where he commenced, with such alterations as made it more suitable for that place rather than the first part of the discourse. The text in Robinson, has this clause "*whose son is he,*" which Mr. Cumming did not use. I heard Mr. Cumming preach from this text, "*faith worketh by love.*" The evening of the same day I looked over a sermon of Robinson's, from the same text, and was satisfied that it was the same sermon that Mr. Cumming preached. I afterwards read the sermon throughout, and recognized a greater part to be verbatim. Mr. Cumming commenced near the top of the 2d page (in the edition I first looked at) of the sermon. I heard Mr. Cumming preach from this text, "*And he was speechless.*" I afterwards read a sermon in Robinson from the same text, and recognized the greater part of it to be the same sermon that Mr. Cumming preached.

Def. Was it not a subject of notorious conversation in Schenectady, that Mr. Cumming preached other people's sermons; and after preaching on the sabbath, was it not enquir-

ed by many, in what author will these sermons be found ?

Mr. Tucker's Trial.

Wit. Yes, sir.

Def. Are you a member of the church in Schenectady ?

1st Charge.

Wit. Yes, sir.

Testimony.

Examination of Mr. Elam Clark, sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has industriously circulated, or circulated at all, the first report charged in this first charge ; and in the unqualified terms in which it is charged, to wit : *intoxication at Mr. Marvin's ?*

Mr. Elam Clark's testimony.

Wit. I do not.

Com. Do you know that Mr. Tucker has industriously circulated the second report, charged in this first charge, to wit : "preaching other people's sermons !"

Wit. I do not ; I do not recollect that he has said any thing of his own knowledge to me on that subject. I believe I have heard Mr. Tucker, as I have many others, converse on that subject.

Cross Examination.

Def. Do you know any thing of the fact of Mr. Cumming's intemperance ; if so, what do you know ?

Wit. I hardly know what to say ; I never saw Mr. Cumming intoxicated. I saw him make a very free use of ardent spirits ; but I don't know that I ever saw him act improperly under the influence of it.

Def. Was it not a subject of notorious conversation in Schenectady, that Mr. Cumming preached other people's sermons ?

Wit. Yes, sir.

Def. Do you know any thing of the truth

Mr. Tucker's Trial.

1st Charge.

Testimony.

of Mr. Cumming's preaching borrowed sermons ; if so, what do you know ?

Wit. I know nothing, unless, a part of another's sermon appearing in the one Mr. Cumming lately published.

Def. Did you, or did you not, borrow of Dr. Nott, a MS. sermon, on " the value of the soul," and lend the same to the Rev. H. Cumming at his request ; and if so, when was it ?

Wit. I borrowed such a sermon of Dr. Nott, (at Mr. Cumming's request) and lent it to Mr. Cumming ; the time I can't exactly tell. It was while Mr. Cumming was preaching in Schenectady on probation, I think in August, 1815.

Def. Have you since compared a printed sermon of Mr. Cumming's with that MS. of Dr. Nott's ; and if so, did you discover any evidence that any part or parts of the printed sermon were taken from the MS ?

Wit. I have compared the printed sermon with the MS. and find a very close resemblance in some parts.

Def. Had Mr. Cumming that MS. long enough to copy it ?

Wit. He had it in his possession three or four days.

Def. Have you in your possession any extracts taken from Dr. Nott's MS. which agree in whole or in part, with Mr. Cumming's sermon ; if so, will you produce and read them ?

Wit. I have, sir, I will read them.

Def. Have you examined the passages quoted in Young, by Dr. Nott ; if so, do you find them varied from the printed text ?

Wit. I have examined them, and do find them varied.

Def. Has Mr. Cumming's sermon that passage of poetry as it stands in the printed text; or, as it stands in Dr. Nott's MS.

Mr. Tucker's Trial.

1st Charge.

Wit. As it stands in Dr. Nott's MS. with the exception of 2 or 3 words.

Testimony.

Dr. Nott. Did you inform Dr. Nott for whom, or for what purpose you borrowed the MS. on the value of the soul, at either of the times in which you borrowed it?

Wit. In the last instance I know I did not. In the first instance I borrowed it solely to read.

Examination of Mr. Cushman, sworn on part of the prosecution.

Witness knew nothing.

Mr. Cumming requested permission to read his statement of grievances again, which had been committed to him for alterations and amendments; presbytery granted this privilege, and *Mr. Cumming* proceeded to read the same.

After which *Mr. Cumming* observed, that if he had been correctly informed, as to the course of measures pursued by the presbytery, in relation to *Mr. Tucker's* trial, he intends the same general observations as contained in articles 1st, 2d, 3d, 5th, 7th, 9th, and 10th, excepting only, the last remark, under art. 1st, as a protest to that course of procedure. The presbytery will, then, at once, observe that by substituting the name of *Mr. Tucker*, in the room of *Mr. Chester*, these observations, as above particularized, will apply with equal emphasis to both cases.

Hooper Cumming.

Mr. Cumming was called for as a witness. The defendant made no objections to his admission; but he did not appear.

Mr. Kellogg, Dr. Eldridge, were sworn on

Mr. Tucker's Trial. the part of the prosecution, but knew nothing.

1st Charge. *Examination of Mr. Johnson*, sworn on the part of the prosecution.

Testimony. *Wit.* Knew nothing more than he had testified in the former trial.

Mr. J. Crane's testimony. *Examination of Mr. Crane*, sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has industriously circulated, or that he has circulated at all, the first report charged in this first charge ; and in the unqualified terms in which it is charged, to wit : intoxication at Mr. Marvin's ?

Wit. Not exactly in the words stated.

Com. Has he told you any thing relative to the report of Mr. Cumming's intemperance at Mr. Marvin's ; if so, when and what ?

Wit. The time I don't recollect particularly ; to the best of my knowledge, he told me that Mr. Chester told him, that Mr. Marvin told Mr. Chester that Mr. Cumming was so far intoxicated or disguised (which term I do not recollect) with liquor, as Mr. Marvin supposed, that he did not wish him to go out of his house. I can't state particularly the expression that Mr. Tucker used ; my impression is, there was something said of his holding him, or trying to prevent him from going out of the house. I am not certain that this impression was from Mr. Tucker : I received it about that time.

Com. Do you know that he has told to others, what he has told to you, relative to the report of Mr. Cumming's intemperance at Mr. Marvin's ; if so, to how many, and to whom ?

Wit. A little time after that, he mentioned the substance of this conversation to Mr. Lee,

in my presence, and to no other, to my knowledge.

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er's Trial.

Com. Do you know any thing of Mr. Tucker's having *industriously circulated* the second report, charged in the first charge, to wit : *preaching other people's sermons ?*

1st Charge.

Testimony.

Wit. I do not.

Cross Examination.

Def. Do you know any thing of the fact of Mr. Cumming's *intemperance* ; if so, what do you know ?

Wit. I once saw Mr. Cumming at Mr. Lee's, when it appeared to me, he acted differently from what he would have done if he had not made too free use of strong drink. At another time I came down, with Mr. Cumming, to Albany. He preached in the first presbyterian church in the evening. We returned the next day, together, to Shenectady. Returning, we called at Mr DeForest's tavern ; shortly after we entered the house, Mr. Cumming told the landlord, you know my drink, or words to that effect. The landlord answered, I do, and went to the bar and prepared something of the colour of brandy, about a gill, as I supposed (but do not know but part of the quantity was water) which contained sugar, as I thought. Mr. Cumming asked me to drink with him, I refused. Mr. Cumming drank the contents. Shortly after Mr. Cumming called for a pint of beer, and again asked me to drink with him, I refused. As he was about to drink the last of it, I told him, it was too much for a temperate man to drink ; he appealed to the landlord in these words, if my memory serves me, " I have often called at your house, did you ever know me to drink too much." The landlord replied, he had not. Mr. Cumming said,

Mr. Tucker's Trial.  1st Charge. Testimony. "here is one of my elders accusing me of drinking too much, or intemperance (I don't recollect which) and I thought I would appeal to you." A little after we left the house, Mr. Cumming complained of my reproving him before the landlord ; I acknowledged I thought I had better not spoken what I did before him. He said he took no offence, presuming that I did not do it to wound his feelings. Mr. Cumming began to be very trifling in his conversation ; urged me to let him drive ; as I refused, he told me I might hold the whip, if I would let him drive the horse ; he afterwards promised if I would give him the whip, he would not strike the horse a blow without my consent ; but struck the horse 2 or 3 times immediately. I took the reins again. I said something to him about moving from Schenectady ; he told me if I went away he should ; I think the reply I made was, " Mr. Cumming, let the world flatter, but christians ought not to be guilty of it." To which he replied, I do not flatter, I speak the truth in God ; if you go away, I will not stay a week. A little before we got to Schenectady, he was very urgent to drive by a waggon which was before us ; upon my refusing, he seized the reins and endeavored to start the horse, and did, so that it was with difficulty I prevented the horse from going by the waggon before us ; he said as I would not drive by when he wished me to, I think he told me, I should drive no faster than he should permit ; I think he took hold of the reins and endeavored to stop the horse in the street, this was after we entered the town.

Def. Had you communicated to Mr. Tucker, any thing relative to Mr. Cumming's intemperance elsewhere, before he informed

you of the report of his intemperance at Mr. Marvin's ; if so, what had you communicated ?

Mr. Tucker's Trial.

1st Charge.

Wit. I am not positive that I had ; but my impression is, that I had communicated information received from Mr. Lee, particularly.

Testimony.

Def. Did you understand at the time, that what Mr. Tucker told you relative to Mr. Cumming's intemperance, was told you as an elder of his church, to make a prudent and private use of for his good, or, with liberty to communicate it generally, and with a design that it should be so communicated ?

Wit. I think Mr. Tucker told me, at the time, that he did not wish to have it go to any body but Mr. Cumming ; I think Mr. Tucker added, that it was mentioned to me as an elder of Mr. Cumming's church.

Def. Have you ever communicated the report as coming from Mr. Tucker ?

Wit. I did to Dr. Nott and Mr. Kelly, members of the committee ; I do not recollect that I had previously.

Def. Had there not been a conversation relating to duty on the subject of Mr. Cumming's intemperance, and were there not persons selected to converse with Mr. Cumming before the thing became public ?

Wit. Yes, sir.

Def. Did not Mr. Tucker consent that Mr. Cumming might be conversed with, on the subject of his intemperance, at Mr. Marvin's, provided Mr. Tucker's name was not mentioned ?

Wit. He did consent.

Def. Do you know any thing of the truth of Mr. Cumming's preaching other people's sermons ; if so, what do you know ?

Mr. Tucker's Trial.

1st Charge.

Testimony.

Wit. I do ; there was a printed sermon of Dr. Griffin's, the substance of which I have heard Mr. Cumming preach twice ; it was a dedication sermon, as much of it as related to the dedication of the meeting-house, was left out ; and I think one or two sentences in the introduction, were left out. I have seen another printed sermon of Mr. Robson or Robinson, I think ; the text, "*What think ye of Christ, whose son is he ?*" Mr. Cumming used only the first clause ; the substance of which sermon, I think I heard Mr. Cumming preach twice, there were some sentences, I believe, left out. I have seen two sermons of bishop Horne, the principal part of which I have heard Mr. Cumming preach ; I saw a sermon last fall, which, when read to me, I recognized the principal part of it, as one Mr. Cumming had preached ; the author's name was Barrow.

Petition from third church for Mr. Cumming's installation.

A petition for the immediate installment of Mr. Cumming, over the 3d presbyterian congregation in Albany, was handed to the moderator, by Mr. Wells, in the name, and at the request of Messrs. Lucas and Graham, the 3d commissioner being out of town.

The petition was read and referred to the moderator and Dr. Coe.

Mr. Sam'l. Lee's testimony.

Examination of Mr. Samuel Lee, sworn on the part of the prosecution.

Com. Has Mr. Tucker told you any thing relative to a report of Mr. Cumming's intemperance at Mr. Marvin's ; if so, when and what ?

Wit. It is my impression that he did, tho' I did not at first recollect it. In the course of conversation Mr. Tucker said, he had received information that Mr. Cumming was, (whether he said *intoxicated*, or *disguised with*

liquor, I do not know, he did not say *drunk*) the impression I got was that Mr. Cumming was what we generally understand by being the worse for liquor, so much so, that Mr. Marvin thought it not prudent to let him go out. I think he further stated, that Mr. Marvin was under the necessity of keeping liquor out of his way.

Mr. Tucker's Trial.

1st Charge.

Testimony.

Com. Do you know that Mr. Tucker has told to others what he has told to you, relative to the report of Mr. Cumming's intemperance at Mr. Marvin's ; if so, to how many, and to whom ?

Wit. I have no recollection of his having mentioned it any but to Mr. Crane and myself.

Com. Do you know that Mr. Tucker has *industriously circulated* the second report charged in this first charge, to wit : *preaching other people's sermons* ?

Wit. I do not know that he has ; I heard him mention the report ; he was not my first informant however.

Cross Examination.

Def. Was it from Mr. Tucker you first heard the report of Mr. Cumming's intemperance at Mr. Marvin's ?

Wit. It is my impression that I had heard it before, I can't be positive.

Def. Do you know any thing of the fact of Mr. Cumming's intemperance ; if so, what do you know ?

Wit. At one time, I think in June or July last, Mr. Cumming and myself went out in a boat across the river ; he gave me a quart bottle of wine, which he wished to have me keep concealed while we went through the streets. During the time we were gone, perhaps two hours, or more, the bottle of wine was drank ; I drank but very little of it myself.

Mr. Tucker's Trial.

1st Charge.

Testimony.

When we returned, I observed Mr. Cumming's conduct was very different from what it was when we went over the river ; being disposed to black-guard persons on the shore. It was with difficulty I restrained him from using improper expressions to a respectable citizen. Mr. James Boyd was walking on the shore ; he asked me if he should hallow out "*Jimme Boyd the Boxer*," I told him " by no means ;" he did speak once or twice, calling him by that name ; but on my remonstrating, he desisted.

On another occasion, Mr. Cumming, myself, and another person, were amusing ourselves in pitching quoits ; Mr. Cumming was very civil the fore part of the day. Mr. Cumming admitted that a quart of brandy was sent for that day, which was nearly drank up, perhaps half a gill or more left ; I did not drink any myself, neither did I see Mr. Cumming drink but once or twice. He several times asked me to go in and drink some brandy, I did not go in myself, but he did. In the afternoon his conduct was different ; while pitching quoits he would endeavor to cheat, frequently making use of obscene language, hallowing, threatening, telling falsehoods ; all which induced me to believe it was the effect of drinking too freely. At another time I returned home from a prayer meeting, when I opened the door I observed a decanter with brandy, and a pitcher of water on the table. Mr. Cumming's conduct, after I came into the room, was uncommonly rude. After I sat down he pulled me over backward a number of times ; dared me several times to scuffle with him. I told him I had been to a meeting and did not feel disposed ; neither did I think it proper to carry

on at this rate. I accordingly left the room. He afterwards came into my room, and asked me what I was mad at. I told him I was not mad ; but that my feelings were wounded, and that I thought he behaved in a manner unbecoming a minister of the gospel. During the time that we were in the room, he was very noisy, and made use of obscene expressions.

Mr. Tucker's Trial.

1st Charge.

Testimony.

At another time Mr. Cumming and myself only were pitching quoits. He was very civil before dinner ; at dinner he drank freely of *spirits*. After dinner we went out again ; his conduct was very different ; knocking off my hat ; striking me ; cheating in play ; falsehood, and telling me I was drunk. I told him he had drank too much ; he said I was a liar. The reason why I told him so was, I thought he did not walk strait. In consequence of his behavior, I continued out with him for some time, not wishing him to go in while in that situation.

Def. Had you communicated to Mr. Tucker any thing relative to Mr. Cumming's intemperance elsewhere, before he informed you of the report of his intemperance at Mr. Marvin's ; if so, what had you communicated to him ?

Wit. I can't recollect particularly. The conversation was on the subject of intemperance generally. Finding Mr. Tucker in possession of some of the facts, relative to Mr. Cumming's intemperance at my house, I conversed freely with him ; I informed Mr. Tucker of several occurrences : 1st. Of spiritous liquor being brought into the house, I thought too frequently, at the request of Mr. Cumming ; likewise this expression I recollect, from a pint to a quart per day, not meaning

Mr. Tucker's Trial.

1st Charge.

Testimony.

every day ; and likewise mentioned to him respecting an occurrence that took place on Monday evening after the last communion in Schenectady ; that Mr. Cumming had taken my horse and sleigh without my knowledge ; that I returned home between 9 and 10 in the evening, and found the sleigh broken ; that from the information received from my family and from Dr. Toll, I had reason to believe Mr. Cumming was intoxicated.

Def. Did you understand at the time, that what Mr. Tucker told you, relative to Mr. Cumming's intemperance, was told you as an elder of his church, to make a prudent and private use of for his good, or that it was told you with liberty to communicate it generally, and with a design that it should be so communicated ?

Wit. I took it to be confidential ; I conceived he told it to us with liberty to tell Mr. Cumming.

Def. Had you communicated the report, as coming from Mr. Tucker, to any person, except Mr. Cumming, before the commencement of this prosecution ?

Wit. I do not recollect as I did.

Def. Was it from Mr. Tucker you first heard the report of Mr. Cumming's preaching other people's sermons ?

Wit. It was not.

Def. Do you know any thing of the truth of Mr. Cumming's preaching other people's sermons ; if so, what do you know ?

Wit. I heard him preach three sermons, which I afterwards read in print ; one of Dr. Griffin's, taken from Luke ; some part of it was left out ; it was a dedication sermon, and that which was applicable to the dedication

he left out ; two from bishop Horne, with some trifling alterations.

Dr. Blatchford. Did not Mr. Cumming frequently have company, and might not the liquor he procured, have been made use of in hospitality ?

Wit. That may sometimes have been the case.

Other questions were put to witness, but the answers containing nothing relevant, were not recorded.

Examination of Mr. Crosby, sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has industriously circulated, or circulated at all, the first report charged in this first charge, to wit : *intoxication at Mr. Marvin's ?*

Wit. No, sir.

Com. Did Mr. Tucker ever tell you any thing relative to the report of Mr. Cumming's intoxication, at Mr. Marvin's, previous to its being made public by the interview between him and Mr. Tucker, at Mr. Platt's ?

Wit. He never told me any thing previous to that interview.

Com. Do you know that Mr. Tucker has industriously circulated the second report, charged in this first charge, to wit : *preaching other people's sermons ?*

Wit. I do not. In common conversation with Mr. Tucker, I have heard him say, that Mr. Cumming preached other men's sermons ; I do not recollect that I ever heard Mr. Tucker give it as his opinion, that Mr. Cumming preached more than one sermon of other men's, and that was Barrow's

Cross Examination.

Def. Do you know any thing of the truth of Mr. Cumming's preaching other's sermons ?

Mr. Tucker's Trial.

1st Charge.

Testimony

Mr. Crosby's testimony.

Mr. Tucker's Trial.

1st Charge.

Testimony.

Wit. I heard Mr. Cumming preach a sermon last Oct. I believe, which, afterwards I saw in bishop Horne ; which, except the introduction, I believe, was nearly verbatim ; the text was in Rev. i. 7.

Def. Did not Mr. Tucker tell Mr. Cumming, at the 2d interview with Dr. M'Auley, that he could not pretend to state in terms, what Mr. Chester said to him, but as to the meaning he could not be mistaken ?

Wit. Mr. Tucker said to Mr. Cumming, that he had stated the report as he received it from Mr. Chester ; and observed, that he could not be mistaken.

Mr. Wm. Adams's testimony.

Examination of Mr. Adams, sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has industriously circulated, or circulated at all, the first report charged in this first charge, and in the unqualified terms in which it is charged ?

Wit. I do not, sir ; I never heard of Mr. Cumming's intoxication at Mr. Marvin's, until after Messrs. Cumming and Tucker had their interview.

Com. Do you know that Mr. Tucker has *industriously circulated* the second report charged in this first charge, to wit : *preaching other people's sermons* ?

Wit. I don't know that he has circulated such a report at all ; Mr. Tucker and I were intimate, and usually attended Mr. Cumming's church ; when either of us read a sermon in print, that Mr. Cumming had preached, we naturally spoke of it to each other. This conversation, however, was always considered by me, in confidence ; not always with myself alone, but with a small class of friends, who were students in divinity.

Cross Examination.

Def. Do you know any thing of the truth of Mr. Cumming's preaching other people's sermons ; if so, what do you know ?

Mr. Tuck-
er's Trial.

1st Charge.

Testimony.

Wit. I know that I have heard Mr. Cumming preach sermons, which I afterwards read in print. There are only three sermons which I should be willing to testify to ; one of Dr. Griffin's, which he preached at the eastward. The other two were delivered in the presbyterian church in Schenectady, two weeks after the report of their having been preached in Albany, were in a vol. of Toplady's works, from this text, "*Seen of angels.*" Mr. Cumming took these words, in connection with the other part of the verse, beginning, "*Great is the mystery of godliness,*" &c. There was a difference in Mr. Cumming's sermons, from the text "*seen of angels ;*" Mr. Cumming introduced the subject of baptism, and made some observations upon it, which is not found in Toplady, except that Mr. Cumming's sermons were substantially the same. With regard to the sermon of Dr. Griffin, which I heard Mr. Cumming preach, it was from this text, "*And he said unto Mary his mother, Behold this child,*" &c. That sermon Mr. Cumming did not deliver precisely as it was in print ; a few of the first sentences in the introduction, were omitted ; a discussion at the close on the subject of the millenium, was also omitted ; excepting that there was no essential difference.

Def. What did Mr. Cumming tell you, concerning the sermon of Dr. Griffin, which you heard him preach ?

Wit. He spoke of that sermon from the above text, either in comparison with the one

Mr. Tucker's Trial.



1st Charge.

Testimony.

he preached in Ballston, at Mr. Smith's ordination, or of that he preached in Milton, and said that this sermon did not cost him half so much labour as either of them ; or that the one with which he compared it, did not cost him half as much labour as this.

Def. Were not all these persons, mentioned as a circle of friends, considered as possessing the same knowledge, and as confidential in their communications to one another, relative to the subject of Mr. Cumming's preaching other people's sermons ?

Wit. They were.

Mr. Bassett was sworn on the part of the prosecution, but knew nothing.

Examination of Mr. U. Marvin, sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has circulated at all, the first report, charged in this first charge, viz. *intoxication at Mr. Marvin's* ?

Wit. I never heard him speak Mr. Cumming's name at my house.

Mr. Strong's testimony.

Examination of Mr. Strong, sworn on the part of the prosecution.

Com. Do you know any thing concerning the 1st specification in this first charge ?

Wit. I know nothing about it, but from Mr. Cumming.

Com. Do you know any thing concerning the 2d specification in this first charge ?

Wit. I do not.

Cross Examination.

Def. Who first told you of the report, that Mr. Tucker had slandered Mr. Cumming ?

Wit. I cannot tell ; I don't recollect any particular person, but Mr. Cumming. I have heard it from other persons, but I don't recollect who, at present.

Def. Did not Mr. Cumming tell you what passed at the interview between him and Mr. Tucker, at Mr. Platt's, in Shenectady ; if so, what did he tell you ?

Mr. Tucker's Trial.

1st Charge.

Testimony.

Wit. Mr. Cumming told, in my hearing, that after he heard the report about intemperance, he came to Albany, first to Mr. Marvin, then to Mr. Chester ; Mr. Marvin denied that he told Mr. Chester ; Mr. Chester denied that he told Mr. Tucker ; and that the matter rested with Mr. Tucker.

Examination of Chancellor Kent, sworn on the part of the prosecution.

Chancellor Kent's testimony.

Wit. Knew nothing on this first charge.

Cross Examination.

Def. Did you ever hear Mr. Cumming preach a sermon in the presbyterian church, in Albany, which you afterward read in print ; if so, in what author did you read it ?

Wit. I heard him preach a sermon in Albany, which I afterwards read in Toplady. I heard him preach it and looked at it the next week ; I called at Mr. Backus' book-store, where, I was informed, the vol. might be had, and took the sermon home with me to my office, and read it attentively. The sermon was the same ; it was an exact copy, verbatim, without any alteration or diminution.

Def. Did you compare the MS. of the sermon you heard Mr. Cumming preach, with the printed copy ; if so, was it a true copy ?

Wit. I never saw the MS.

Miss L. Peck was sworn on the part of the prosecution, but knew nothing.

Cross Examination.

Def. Do you know any thing concerning the intemperance of the Rev. H. Cumming ; if so, what do you know ?*

* See note next page.

Mr. Tucker's Trial.

1st Charge.

Testimony.

Mr. Wells in the name of the commissioners, requested that presbytery would immediately enter upon the request made yesterday, viz. the immediate installation of Mr. Cumming.

The moderator decided, that it would be in order, and that he thought it would be the duty of presbytery to do so, the first moment there was an opening for their taking up the business.

Miss H. Peck was sworn on the part of the prosecution, but knew nothing.

Cross Examination.

Def. Do you know any thing concerning the intemperance of the Rev. H. Cumming ; if so, what do you know ?*

Mrs. Marvin was sworn on the part of the prosecution, but knew nothing.

Dr. M'Auley's testimony.

Thomas M'Auley, LL. D. sworn on the part of the prosecution.

Com. Do you know that Mr. Tucker has industriously circulated, or circulated at all, the first report charged in this first charge, and in the unqualified terms in which it is

* When this question was offered, the moderator said, that he was aware that the defendant had a right to insist on its being put and answered ; it would, however, be recollected, that the witness had been examined on that point, during Mr. Chester's trial, and the testimony then given, was on record. It would be painful to hear a repetition of it ; and if it was not necessary, considering Mr. C's alleged state of mind, he thought it ought not to be now repeated. He was sensible, that the defendant had a right to make his defence complete ; and it was not his wish, that the court should interfere with the exercise of that right, so far as such exercise was necessary. If, therefore, Mr. Tucker would waive the right of examining the witness, on the point in question, he should hereafter be allowed, if deemed necessary, to read to the court, the testimony on that point, which the witness had already given.

Mr. Tucker said, that on the ground stated by the moderator, he waived the right of examining the witness.

charged, to wit: *intoxication at Mr. Marvin's?* Mr. Tucker's Trial.

Wit. I have no knowledge of it in those terms. 1st Charge.

Com. Have you heard Mr. Tucker say any thing relative to the report of Mr. Cumming's intemperance at Mr. Marvin's; if so, when and what? Testimony.

Wit. At Mr. Cumming's request, I called with him to see Mr. Tucker. Mr. Cumming interrogated Mr. Tucker in relation to that charge.

Com. What was the amount of what Mr. Cumming said to Mr. Tucker, or of what Mr. Tucker said to Mr. Cumming, at their first interview?

Wit. Mr. Cumming told Mr. Tucker, that he understood he had been slandering his character. Mr. Tucker said he did not know that he had. Mr. Cumming told him that he had told Mr. Lee, that he had been *drunk* at Mr. Marvin's. Mr. Tucker replied, that he did not know that he had particularly told Mr. Lee; he had told Mr. Crane, and Mr. Lee was present; but he had not put it in those terms; but what he said was, that he was disguised, or the worse for liquor; or the idea was, that he was not in a state to go out. Mr. Cumming insisted that Mr. Tucker had told it in the unqualified terms, that he was *drunk*. Mr. Tucker said he had not, but he would not quibble about words. Mr. Cumming asked him, what was his object in telling this to Mr. Crane? Mr. Tucker told him, he thought it was a report of that nature that Mr. Cumming ought to be acquainted with it; and he knew that Mr. Crane was in habits of intimacy with him, and supposed he would tell him of it. Mr. Cumming asked

Mr. Tucker's Trial.

1st Charge.

Testimony.

him, why he did not come and tell it to him, himself? Mr. Tucker told him, he thought it would come better from an older person, as he was but a young man, and not on very intimate terms with him. Mr. Cumming, after some further observations, asked Mr. Tucker for his author. Mr. Tucker seemed to hesitate about giving his author ; he said he did not know that he was authorized to tell it. Mr. Cumming said, that if Mr. Tucker did not tell him, he must consider him as the author of the lie, for he had talked with Mr. Marvin the day before in Albany, and Mr. Marvin declared he never even suspected him of such a thing. After some conversation Mr. Tucker gave Mr. Chester as his informant ; the first interview was at Mr. Tucker's room, no one present but myself and the two gentlemen ; there was one there before the conversation began, and one came in after the conversation ended, but no one was there during the interview. I believe it was on the 2d January.

Com. What was the amount of what Mr. Cumming said to Mr. Tucker ; and what was the amount of what Mr. Tucker said to Mr. Cumming, at their *second interview*?

Wit. Mr. Cumming requested me the second time to go with him to Mr. Tucker's room, on his return from Albany. When we went in we found Mr. Crosby sitting with Mr. Tucker. Mr. Cumming told Mr. Tucker, that he had been to Albany the day before ; that he had gone to Mr. Hutton's and sent for Mr. Marvin ; that he asked Mr. Marvin, in the presence of Mr. Hutton, in relation to this report of intemperance. Mr. Marvin told him that he had never told any body of it ; that he did not believe it ; that he had not

any reason to believe it ; that he ought rather to have apologized to him for not putting more liquor on his table, than to have said any thing to him for having drank too much ; that he had then sent for Mr. Chester, and asked him whether he had ever told Mr. Tucker, that he had been *drunk* at Mr. Marvin's. Mr. Chester declared that he never had ; that Mr. Marvin had never told him so, and that he did not believe it.

Mr. Tucker's Trial.

1st Charge.

Testimony.

And Mr. Cumming told Mr. Tucker, that now the lie lay at his own door, and that he might do as he pleased about it. He further stated, that as he did not believe it proceeded from any malice in Mr. Tucker, but for want of prudence, common to youth, he would take no further notice of it ; and seemed to advise Mr. Tucker not to take any more notice of it. Mr. Tucker told him it was true, notwithstanding ; that he had falsified nothing about it.

Com. Do you know that Mr. Tucker has industriously circulated the second report, charged in this first charge ?

Wit. No, sir ; I have no knowledge of it at all. He never said any thing to me on that subject.

Cross Examination.

Def. Do you know any thing of the truth of Mr. Cumming's preaching other people's sermons ; if so, what do you know ?

Wit. I do know that he has preached sermons, that I have afterwards read in the same words in print ; I have read several in Logan ; several in Horne, and several in Robinson. I heard him from Robinson, on the subject of " faith and holiness," on, that the bible is a good book ; on that subject, "*what think ye of Christ ?*" and several others ; from

Mr. Tucker's Trial.

1st Charge.

Testimony.

Horne, the sermon which the author calls "the prevailing intercessor;" another, "Daniel is in Babylon;" another, "the king of glory." The two first of them I read immediately between service, on the same Sabbath. In the "prevailing intercessor," there was only one word changed.

Mr. E F. Backus, sworn on the part of the defendant.

Def. Do you know any thing of the truth of Mr. Cumming's preaching other people's sermons; if so, what do you know?

Wit. I never heard Mr. Cumming preach but four sermons, as I recollect, two sermons from Toplady's works were preached in the 1st presbyterian church, which as nearly as I could recollect, were an exact copy. The others I know nothing of.

Mr. Schermerhorn's testimony.

Mr. Schermerhorn, sworn on the part of the defendant.

Def. Do you know any thing of Mr. Cumming's intemperance; if so, what?

Wit. I have seen the man several times. He came to my father's house in the beginning of sleighing, with Dr. Toll; the first thing he called for, was spirits; he ordered, first, a small glass apiece; they drank it, sat a spell, and called for another glass. Mr. Cumming wished Dr. Toll to drink some of it; but he did not drink much of it; Mr. Cumming drank the remainder. Before he went away, he called for another glass, and drank the greater part of it. In going after his coat, he staggered considerably; and in going out of the house made considerable of a staggering, or reeling.

Def. Are you a member of a church?

Wit. Yes, sir.

As Mr. Schermerhorn withdrew, Mr. Tuck-

er informed the court, that he had yet other witnesses to introduce, to establish still further, and on other occasions, the fact of Mr. Cumming's intemperance. The moderator said, that he believed the evidence already presented to the court, would be deemed sufficient to establish that fact, so far as the defendant could be considered as having made himself responsible by any thing he had said, for its establishment ; and considering the apology suggested by Mr. Cumming's alleged state of mind, on these occasions, he thought that Mr. Tucker ought not to wish to present, and that the court ought not to allow to be presented any other, or further evidence on the article of intemperance, than merely what was requisite, as matter of defence on the charges now at issue.

Mr. Tucker's Trial.

1st Charge.

Testimony.

Mr. Tucker said, he did not wish to do so ; that it would be as painful to him to present, as it would be to the court to hear, the testimony alluded to. He only wished to establish the fact of Mr. Cumming's intemperance, so far as it was requisite for him to do this, in his own defence, on the charge brought against him for having slandered Mr. Cumming on that article ; and if the court thought the evidence already adduced was sufficient for that purpose, he did not wish that his other witnesses should be examined ; but if the court were not satisfied, he was prepared to establish it by other witnesses.

Deeming the evidence sufficient, so far as the defendant was concerned, the court declined examining any other witnesses.

SECOND CHARGE.

2d Charge.

With falsehood in asserting, that the Rev. John Chester, was his author of the report of Mr. Cumming's intoxication at Mr. Marvin's.

Mr. Tucker's Trial.

2d Charge.
Testimony.

Rev. J.
Chester's
testimony.

Rev. John Chester, sworn on the part of the prosecution.

Com. Do you know any thing of the falsehood alleged against Mr. Tucker, in this second charge ?

Wit. I do not.

Com. What did you tell Mr. Tucker, that Mr. Marvin told you relative to Mr. Cumming's intemperance at his house ; and under what circumstances did you tell him ?

Wit. I told Mr. Tucker that Mr. Marvin told me, that he was convinced, from his own observation, that Mr. Cumming was in the habit of making an unadvised and improper use of ardent spirits ; and that he had sometimes drank so much, that he did not think it prudent for him to be seen. I communicated these facts to Mr. Tucker, under the following circumstances : it was in my study, in a confidential conversation with Mr. Tucker, who was the friend of my esteem and confidence. I stated it to him, because I wished to know whether such an evil had ever been noticed in any other place. I did not authorize Mr. Tucker to repeat what I had said ; but I do not consider Mr. Tucker as having either intentionally, or designedly, betrayed my confidence.

Cross Examination.

Def. Did you not tell Mr. Cumming, at the interview at Mr. Hutton's, that if Mr. Tucker felt himself at liberty to communicate what you had told him, he was justified in saying what he did ?

Wit. I did to that effect.

Mr. Strong, sworn on the part of the prosecution.

Com. Do you know any thing of this second charge ; if so, what ?

Wit. Nothing but what I heard from Mr. Cumming. Mr. Tucker's Trial.

Rev. Jonas Coe, D. D. Dr. Corning, Mr. Bliss, Mr. Hart, Mr. Hutton, Mr. Wisner, Mr. Clark, Mr. Cushman, Mr. Kellogg, Mr. Johnson, Mr. Crane, Mr. Lee, Mr. Crosby, Mr. Adams, Mr. Bassett, Mr. Marvin, Chancellor Kent, Miss L. Peck, Miss H. Peck, Mrs. Marvin, Thomas M'Auley, LL. D. were respectively examined on this charge, but knew nothing. 2d Charge.
Testimony.

THIRD CHARGE.

3d Charge.

With falsehood in an interview with the Rev. H. Cumming and Professor M'Auley, at Schenectady, January 2, 1817, in a declaration he made to the Rev. H. Cumming, in the words following, to wit: "Except the Marvin business, I never opened my lips against you," which was false.

1st. Because, he had previously at Mr. Marvin's, used very abusive language relative to the character of the Rev. H. Cumming, for which Mr. Marvin checked and reproved him.

2d. Because, he had previously slandered the Rev. H. Cumming, in a conversation with the Rev. Dr. Coe, Dr. Burritt, Mr. Kellogg, and Counsellor Bliss.

3d. Because, he had previously endeavored to detach, from Mr. Cumming the affections of Jonathan Crane and Samuel Lee, two of his elders.

4th. Because, he had spoken reproachfully of the Rev. H. Cumming, relative to his drunkenness and plagiarism, to John Platt and wife; also to Elam Clark and S. Crosby; also, to Benj. B. Wisner and Samuel Davis; Professor M'Auley and widow Teller.

Thomas M'Auley, LL. D. sworn on the part of the prosecution. Dr. M'Auley's testimony.

Mr. Tucker's Trial.

3d Charge.

Testimony.

Com. Do you know any thing of the declaration on which the falsehood charged in this third charge is founded ?

Wit. I never heard any such declaration.

Com. Did you ever hear Mr. Tucker make to Mr. Cumming, a declaration in any other words to that effect ?

Wit. I will state what I can. Mr. Cumming told him at the first interview that he had been circulating many other reports against him ; that he could prove it by several members in communion with the first presbyterian church in Albany. At the second interview, in relation to this part of the interview, Mr. Tucker insisted upon Mr. Cumming's giving him his author's for these alleged reports. Mr. Cumming refused. Mr. Tucker plead that it was as necessary that he should give his author, as that he should give him Mr. Chester for the former story. Mr. Cumming still refused.

Com. Do you know any thing of the first allegation under this charge ?

Wit. I know nothing about it, except what Mr. Cumming said, at one of the interviews. He told Mr. Tucker that he had spoken so abusively respecting him, that Mr. Marvin found it necessary to give him a severe reproof. I think he said Mr. Marvin told him so.

Com. Do you know any thing of this second allegation ?

Wit. Nothing.

Com. Do you know any thing of this third allegation, under this charge ?

Wit. I heard Mr. Tucker acknowledge to Mr. Cumming, that he had told Mr. Crane, in the presence of Mr. Lee, of Mr. Cumming's intemperance at Mr. Marvin's.

Com. Do you know any thing of this fourth allegation ?

Wit. Knew nothing.

Mr. Haliday. Did Mr. Tucker *deny* his having abused Mr. Cumming at Mr. Marvin's, as stated by Mr. Cumming at one of the interviews ?

Wit. He said he had no remembrance of it.

Mr. Benj. B. Wisner, sworn on the part of the prosecution. Knew nothing of the third charge, or of the first, second and third allegations under it.

Com. Do you know any thing of the fourth allegation under this charge ?

Wit. I think Mr. Tucker never mentioned Mr. Cumming's intemperance, until he related the conversation with Mr. Cumming, in the presence of Dr. M'Auley. I don't know as Mr. Tucker ever spoke reproachfully of Mr. Cumming. Mr. Tucker and myself often conversed on the subject, and each expressed his opinion freely.

Mr. Crane, sworn on the part of the prosecution. Knew nothing of the third charge, or of the first and second allegations under it.

Com. Do you know any thing of the third allegation under this charge.

Wit. I do not as it stands ; I do not know that Mr. Tucker endeavored to alienate my affections from Mr. Cumming, in any thing he communicated to me of Mr. Cumming's character.

Witness knew nothing of the fourth allegation.

Mr. Lee, sworn on the part of the prosecution. Knew nothing of the third charge, or of the first and second allegations under it.

Com. Do you know any thing of the third allegation under this charge.

Mr. Tucker's Trial.

3d Charge.

Testimony.

Mr. Tucker's Trial.

3d Charge.

Testimony.

Wit. I do not know ; it was never my impression, that Mr. Tucker wished to detach my affections from Mr. Cumming ; I can't judge his motives.

Mr. Haliday. Did the information of Mr. Tucker, either in whole or in part, detach your affections from Mr. Cumming ?

Wit. That is a hard question to answer. These charges were most of them known to me previous to the conversation with Mr. Tucker ; how far Mr. Tucker's conversation influenced my mind, it is difficult to say.

Rev. Jonas Coe, D. D. Dr. Corning, Mr. Bliss, Mr. Hart, Mr. Hutton, Mr. Kellogg, Mr. Clark, Mr. Cushman, Mr. Johnson, Mr. Crosby, Mr. Adams, Mr. Bassett, Mr. Marvin, Chancellor Kent, Miss L. Peck, Miss H. Peck, Mrs. Marvin, Rev. John Chester, were respectively examined on this charge, and each of the specifications under it, but knew nothing.

The minutes of the confidential committee were called for, and so much of them was read, as contained a written communication addressed to said committee, by the Rev. Hooper Cumming, in the words following :

Schenectady, March 12th, 1817.

I beg leave to state to the committee, appointed by the presbytery of Albany, on the cases of Messrs. Chester and Tucker, one circumstance which escaped my mind yesterday. It refers to Mr. Tucker, and is this : In the first interview, I had with him, Dr. M'Auley being present, Mr. Tucker observed, " except the Marvin business, I never opened my lips against you." After my return from Albany, I told Mr. Tucker, at my second interview, that what he stated before was false, because Mr. Marvin informed me

on Friday, the 3d of January, that the first, and only night, Mr. Tucker lodged in his house, he used very abusive language in relation to my character ; that Mr. Marvin checked and reproved him for the same. Mr. Tucker has, contrary to his declaration in the first interview, in several instances before that time, slandered me in a very gross manner, both in this city and in Albany. Witnesses, Uriah Marvin, Isaac Hutton, N. B. Bassett, John Chester, Wm. Johnson, Isaac Lucas, Richard Duncan, Jonathan Crane, Samuel Lee, John Platt and wife, Lucretia Peck, Hannah Peck, Mrs. U. Marvin, Mr. Elam Clark, Mr. Crosby, Mr. Adams, Mr. Wisner, Mr. Davis, Mr. Cumming, Dr. M'Auley.

Signed, *Hooper Cumming.*

Mr. Tucker's Trial.

3d Charge.

Testimony.

All the testimony recorded under the several charges, brought against Mr. Mark Tucker, having been read and considered, and the question taken on each separately :

THE COURT UNANIMOUSLY DECIDED,

Judgment
of the
Court.

I. *That neither of the charges had been made out, on the part of the prosecution.*

II. *That it had been made out, on the part of the defendant, that what he admits he has said relative to Mr. Cumming's plagiarism and intemperance (which is all that has been proved) was true, and that satisfactory reasons for saying the same, have been assigned.*

This court do therefore wholly acquit the defendant of each and every charge brought against him. Nothing having appeared to impeach his character either as a christian, or as a licentiate ; or to justify the personal inconvenience to which he has been subjected, during a trial which appears to have been

Mr. Tucker's Trial. commenced and prosecuted against him, without any justifiable cause.

3d Charge.

HALSEY A. WOOD, }
N. M. WELLS, } Com'tee.
REUBEN SMITH, }

A true copy of the minutes.

H. A. WOOD, Tem. Clerk.

SCHENECTADY, APRIL 22d, 1817.

Presbytery met according to adjournment, and was constituted with prayer by the moderator.

PRESENT AS FOLLOWS.

MINISTERS.

Rev. ELIPHALET NOTT, D.D. Moderator.
SIMON HOSACK, D. D.
JOHN CHESTER,
HALSEY A. WOOD,
REUBEN SMITH,
JONATHAN HOVEY.

ELDERS.

ANANIAS PLATT,	1st church, Albany,
JOHN BOARDMAN,	2d church, Albany,
ALEXANDER KELLY,	Schenectady,
LUTHER STILES,	Amsterdam,
JOHN M'CREA,	Ballston,
EZRA NASH,	Milton,
JONATHAN I. CLAYTON,	Duanesburgh,
JOHN CHAMBERLAIN,	Charlton.

The minutes of a former meeting of presbytery, that related to the case of the Rev. Hooper Cumming, were read.

The moderator states reasons why he cannot continue to act in his office.

The moderator (Dr. Nott) remarked, that it was known to presbytery that he had on a former trial, when the Rev. Hooper Cumming was called as a witness, expressed doubts as to his sanity, that he had been impeached for having so expressed himself.

Till that impeachment was formally issued, he did not think that it was competent for him on the present trial to sit in judgment. At any rate he could not, while under his present impressions, consent to sit in judgment to try the Rev. Hooper Cumming, by the same rules by which he should feel bound to try another man. And having read a sentence or two from a letter of the Rev. Hooper Cumming's father, he said if the trial was to proceed in its present form, he could not sit as a judge, and resigned the chair.

Mr. Cum-
ming's Tri-
al.

The Mod-
erator re-
signs the
chair.

The Rev. Mr. Smith being appointed, took the chair.

It was enquired whether the Rev. Hooper Cumming was present? Mr. Graham, one of the commissioners, declared that he was not, and begged permission to read a memorial from the third congregation; the motion being taken, leave was granted, and Mr. Graham proceeded:

“To the Reverend presbytery of Albany.

“The memorial of the subscribers in behalf of themselves and their families, inhabitants of the city of Albany, and attendants on the ministry of the Rev. Hooper Cumming, in the third presbyterian church in the said city, respectfully sheweth:

A commis-
sioner
reads a me-
morial
from the
3d church.

“That they have learnt with deep regret and mortification, that the memorial of the commissioners in behalf of the congregation of the third church, praying for the immediate installation of the Rev. Hooper Cumming, and for a discontinuance of all proceedings against him, has not met with that favorable reception from the presbytery, which your memorialists had fondly anticipated. Induced, therefore, by considerations of the greatest importance, and urged by motives which cannot be

Mr. Cum-
ming's tri-
al.



Memorial
from the
3d church.

condemned, your memorialists, once more, beg leave to approach the presbytery, and in terms the most fervent and sincere, to call your attention to a subject, most interesting to them and to the church at large. Your memorialists are actuated to this measure, not from the feelings of the moment, not by popular impulse, or unfounded prejudice or zeal ; but the convictions of their consciences, after unwearied and patient research, and cool and dispassionate deliberation. They are fully aware of the delicacy and importance of the subject. They have examined it in all its various lights and bearings. They have reflected again and again, with anxious hopes and prayers, to arrive at a fit and just conclusion, and the result is still the same, unaltered by all that has been so warmly and strenuously urged against it. Your memorialists therefore approach the presbytery in all the honesty and fervor of truth, supported only by a zeal worthy of the cause they advocate. They would be unmindful of the duty they owe to themselves and to the presbytery, did they not briefly state the causes which have produced these convictions, and they solemnly appeal to the *Judge of all hearts*, for the purity and uprightness of their motives and intentions.

It is a well known fact, that for many years, the first presbyterian church in this city, was the only one to which the pious and devout of that persuasion could resort. It was soon found that a second became necessary for the accommodation of the many families who wished to attend divine worship. Causes not necessary here to be detailed, rendered the establishment of a third church in this city indispensable. It was soon established,

and it was admitted and received under the care and government of the presbytery of Albany. Thus the third presbyterian church in this city, received a solemn pledge of your paternal care, protection and regard ; a pledge which your memorialists consider sacred and inviolable ; a pledge made in the presence of an *all-seeing God* to promote his glory, and to increase the number of his saints. The congregation was soon formed and organized with every requisite and ceremony, that the civil and ecclesiastical laws require. There was still one desideratum, or pastor, whose services would conduce to the honor of his *Divine Master*, and the welfare of the flock which should be committed to his charge.

Mr. Cum-
ming's Tri-
al.

Memorial
from the
3d church.

The Rev. Mr. Cumming was at this time regularly settled in the city of Schenectady, in a church over which he had presided for nearly two years, with a reputation which had not been confined to the narrow precincts of a city, but was rapidly extending itself throughout the state. Your memorialists, by their constituted organs, had made diligent enquiry, and believing from the best sources of information in their power, that to call the Rev. Hooper Cumming as their pastor, would be a measure conducive to their spiritual interests, did *unanimously* call him, which call was in due form laid before the presbytery, and *received their unanimous vote*, that it should be put into his hands for his consideration and answer.

The Rev. Hooper Cumming was released from his obligations to his church at Schenectady, and received from that church the most honorable testimonials of his character and standing as a minister. Thus far no ob-

Mr. Cum-
ming's Tri-
al.



Memorial
from the
3d church.

stacles had intervened to interrupt the object in view. Your memorialists had, at a great expense, provided a church and made engagements, in full faith that the previous arrangements which had been made by them towards the final settlement of the Rev. Hooper Cumming in this city, would be ratified and carried into full effect. After all these preparatory measures, after the Rev. John Chester had attended a meeting of the congregation, to moderate the call of the Rev. Hooper Cumming, after the presbytery had received the congregation under their care, presented their call to Mr. Cumming for his consideration, and recorded his acceptance of the same on their minutes, *without a dissenting voice*, your memorialists were for the first time, alarmed with impending difficulties and dangers, and were tauntingly and unfeelingly told that all their labors had been fruitless, that their pecuniary engagements were to be a burden to them without any prospect of relief, and that neither their spiritual hopes could be realized, nor their temporal interests respected. It is not the object of your memorialists to disguise the nature, or to examine the origin of those disputes which have recently become the topic of conversation in almost every circle. They address you as members of the church of Christ, equally interested with themselves, for the honor of that cause which is the hope of the christian in this life, and the theme of his perfect fruition in that to come. And your memorialists warmly and zealously attached to the church of Christ, firmly and conscientiously believe that their pastor is intended, by divine providence, to be of signal and permanent usefulness to the church, and

an instrument to bring many souls into the way of salvation. During the short period of his ministry in this city, a scene has been exhibited, calculated, we humbly hope, to cause the true christian every where to joy and rejoice with us. We have seen not only those who formerly belonged to the fold of Christ, but a large number of those who wandered as sheep having no shepherd, crouding together the place where God's honor dwells, and where he has promised to meet his saints. Nor does it give us pain, nor can it, we humbly conceive, give any member of the church of Christ pleasure, that within the walls of our church, are to be seen many, till this time, unaccustomed to the sweet accents of the gospel. On the contrary, we count it an omen for good, and one more proof that God is faithful to his promises, and has made him the happy instrument of reconciliation between man and man, and, we sincerely believe, between God and men. Your memorialists are fully aware under what embarrassments their pastor has lately been placed. Recent proceedings of an ecclesiastical nature, as well as public rumour, have announced the nature and extent of those embarrassments. Your memorialists have fully understood, even from sources the least friendly to their pastor, and without extenuation or excuse, the nature of the charges exhibited against him ; and after mature and full deliberation, they are perfectly satisfied, that their pastor ought to be left undisturbed in his course of usefulness in the church, and that your memorialists ought not to be deprived of his services among them. Painful indeed would it be to a congregation of more than fifteen hundred souls,

Mr. Cum-
ning's Tri-
al.

Memorial
from the
3d church.

Mr. Cum-
ming's Tri-
al.

Memorial
from the
3d church.

(might they be indulged in an estimate) to learn that their earnest petitions had been rejected, and that a deaf ear had been turned to their warm and repeated solicitations, more painful still when they should learn that such rejection should occur under so many exciting causes, which render it difficult, if not impossible, to resist the various impressions which may have been made upon the mind, and emphatically more painful still, when such rejection would cause so many souls to wander without a Shepherd and without a fold. Your memorialists cannot believe, that these considerations will fail of having effect upon the members of the presbytery. They consider that body, in some sense, as the guardians and protectors of the spiritual and temporal interests of the church. To assist in the saving of souls, and not in their destruction ; to build up and not to demolish ; to treat their brethren with tenderness and love ; to exhibit a spirit of forbearance and charity, and utterly to reject any system which tends to distract and to divide the church, or to drive from her walls, souls which might otherwise have there experienced sweet communion and comfort ; so dreadful a responsibility they cannot believe, will be assumed by any tribunal which boasts the christian name. And what, we ask, would be the result, the melancholy and destructive result, of a policy opposed to the principles we suggest ? Would any satisfaction be derived from the reflection, that the libertine, the profligate and the profane, who were about to be reclaimed from their vicious pursuits, had been driven back again to the paths into which they had strayed ? Would any christian rejoice, that many, very many,

respectable and pious families had been left without a church, and were deprived of the pastor who they felt, and sincerely believed, was the best calculated to warm their hearts in the duties of devotion, and to lead them to heaven ! Would it redound to the christian name, to exhibit to the world the asperities of feeling, the collisions of opinion, or the prejudices of the mind, which in the darker ages of the world, have made more infidels, and produced more wickedness and distress, than all the efforts united of the worst enemies which the cause of Christ has had to contend ? Look, we intreat you, at the consequences of all disputes produced in the church, by misguided zeal, or overheated prejudice and fanaticism, and they will be found to have been destructive to christian charities, and to have greatly impeded the progress of the gospel. We do not say, that our pastor is without his faults, he is a man, in his own unassuming language, he is a young man, who depends on the charity and benevolence of christians. Even if he be guilty, the hand of benevolence would not tear open, and cause to bleed afresh, the wounds of an amiable man, with a young and amiable partner and infant, just entering on the stage of life. If reports can be relied upon, confirmed, however, by recent ecclesiastical proceedings in this city, his faults are plagiarism, and denying the charge when made. Neither intemperance, nor immorality compose any part of the charges exhibited against him. Surely then, reverend presbytery, charity demands forbearance. We, who have seen his labors and discovered his usefulness, can justly appreciate those charges. If the anticipated examination is intended for our

Mr. Cum-
ming's Tri-
al.

Memorial
from the
3d church.

Mr. Cum-
ming's Fri-
al.

Memorial
from the
3d church.

benefit and instruction, we intreat you to forbear. We want no farther light upon this part of the subject. We are satisfied ; and all we ask is to permit him and us to pursue, undisturbed, those labors and devotions, in which we have so deep an interest. As to the insinuation of insanity against our pastor, we are willing, from the evidence of our own senses and observation, to abide the consequence. We fear it not. But if it be so, it is an affliction from the hand of divine providence, which we trust will never be made the subject of a charge. But we hope, reverend presbytery, that in this respect you will permit us to judge as well as yourselves. Insanity is a subject, which the community can ascertain and investigate. If your memorialists are, as a very considerable portion of that community are, satisfied that such a charge is ill founded, they hope and trust their evidence is entitled to some respect. At all events, we hope that the reverend prebytery will permit us to be better satisfied before we condemn. Thus have we attempted to lay before the presbytery some, among the many considerations which have induced us to pray for the immediate installation of the Reverend Mr. Cumming, and for a discontinuance of all further proceedings against him. We cannot believe that our petition will be rejected. It is painful to contemplate even the possibility of such an event. But if, in the course of divine dispensations, we shall be afflicted with intelligence so painful and unexpected, we can only conclude with the fervent hope, that the injury which may thereby accrue to the church of Christ, will not be imputed to improper motives on the part of the presbytery.

“ Signed by and in the name and on the behalf of the third presbyterian church in the city of Albany, in pursuance of a resolution of the 21st April, 1817. Mr. Cumming's trial.

“ JOHN M'MILLAN, *Clerk.*

“ DANIEL E. GREGORY, *Secretary.*

“ JAMES LOW, *Asst. Sec.*”

Dr. Hosack, after some remarks, moved that the above memorial lie on the table.

The motion was not seconded.

On motion of Dr. Nott, the above memorial was committed to a committee to report thereon. Dr. Nott and Mr. M'Crea, were appointed that committee. Referred to a committee.

Dr. Hosack moved, that the Reverend H. Cumming, be cited to appear before presbytery, at 9 o'clock to-morrow morning, to answer to the charges tabled against him; and assigns his reasons for the same.

Dr. Nott stated, that before presbytery came to a decision, he wished to make some further communications of a private nature, and moved that presbytery be alone.

The motion prevailed, and presbytery had an interlocutory meeting. Interlocutory meeting.

Dr. Nott read a letter from Mr. Cumming's father, in the words following :

“ *Newark, April 15th, 1817.*

“ Dear sir,

“ I have, my dear friend, to thank you a thousand times, for the great friendship which you have shewn to my truly unfortunate son, and I have deeply to lament and mourn, that so little benefit has arisen from all your labors of love. Our hearts are sorely wounded, and great indeed is our mortification on your account, as his unwearied friend, on his account as our once very beloved son, for the Letter from Gen. Cumming;

Mr. Cum-
ming's Tri-
al.



Letter
from Gen.
Cumming.

great injury he has done to the cause of religion. I am, however, persuaded, that he must be under a kind of derangement, and has been, in a greater or less degree, ever since that mournful event, the loss of his wife. If this is not the case, he is, of all men, in the most deplorable condition. Our heavy affliction we pray may be sanctified unto our souls, and we desire the prayers of God's people for him and for us, on this most mournful occasion.

"I have written to him, and wish you to see him and urge him to take the advice I have given him. Accept, my dear sir, the thanks of the mourning parents for their lost child, for your fatherly care of him. Dr. Griffin unites his thanks with ours.

"Yours, most respectfully and affectionately,

(Signed) J. N. CUMMING."

Dr. Hosack's motion for the immediate citation of the Rev. Hooper Cumming, being then fully discussed and the question being taken, was lost.

Moderator
requests
delay.

Dr. Nott then stated to presbytery, that he wished they would indulge him at least with some delay, as he was himself desirous to converse more fully with Mr. Cumming; and as he had unavoidably a great responsibility in the present case, and as delay can produce no ultimate injury, because, if presbytery are not convinced that his opinion is correct, as to Mr. Cumming's state of mind, they can proceed to try him on the present charges. He, therefore, offered the following resolution: *Resolved*, that the trial of the Reverend Hooper Cumming, be postponed until the first meeting of this presbytery, and that the

A resolu-
tion to
that effect.

moderator be directed to put notice thereof into the circular, to convene any meeting of presbytery previous to the next stated meeting thereof. And that the clerk be directed to cite the Rev. H. Cumming, then to appear and answer to the charges tabled against him.

Mr. Cum-
ming's Tri-
al.



Dr. Nott's resolution having received considerable discussion, and the question being taken, it was carried.

The committee appointed on the memorial from the third church, reported as follows :

“ The presbytery of Albany, reply to the memorial and petition of the third presbyterian congregation of Albany ; that they doubt not that their request for the immediate installation of the Rev. Hooper Cumming among them, has arisen from sympathy for him, and they therefore cheerfully record it, that it may now and hereafter, have its full effect. There are however reasons which the presbytery trust will have weight, with the congregation, for a temporary postponement of the question of Mr. Cumming's installation.

Report of
a commit-
tee in re-
ply to the
memorial
of the 3d
church.

“ The settlement of a minister is among the most solemn transactions in which a congregation are called to engage. You know, brethren, the perturbed state of the public mind, and whatever anxiety you may feel, it would in the opinion of presbytery, be undesirable to approach such a duty at such a moment. And besides, we ourselves are not at liberty to decide the ultimate question, till we are in possession of all the information that ought to influence our decision on it. You are now enjoying the labours of your pastor elect, and presbytery hope that the unavoidable delay of his installation will op-

Mr. Cum-
ming's Tri-
al.

Report of
a commit-
tee in re-
ply to the
memorial
of the 3d
church.

erate no permanent injury either to you or him. And they trust that their own acts, when they shall be understood, in connection with all the circumstances which produced them, will be deemed, if not altogether wise, at least deserving of a charitable construction. Should they be convinced that they have erred, they will hasten to correct that error. And they assure the third congregation of Albany, that they feel a deep interest in their welfare, and they will not delay a compliance with their request, after existing impediments are removed, and the way shall be clear for a compliance with their request. In the mean time presbytery trust, that that congregation will bear their disappointment with the patience and humility, and the charity of christians.

“With respect to the other request contained in your memorial, you will receive the answer of presbytery, in the resolution of presbytery, a copy of which has already been furnished your commissioners.”

The report was accepted.

Interlocu-
tory meet-
ing.

Presbytery had an interlocutory meeting. Dr. Nott read a communication from the commissioners of the third church, viz.

“*Messrs. Isaac Hempsted, John T. B. Graham, Isaac Lucas, Wm. Eaton, John M. Lachlin, David E. Gregory, & Joseph T. Rice.*”

“GENTLEMEN,

Communi-
cation from
the com-
missioners
of third
church.

“The meeting held this evening in the third presbyterian church in this city, in addition to the proceedings with which you are furnished, have passed the following resolutions :

“Whereas a memorial has been prepared and approved of by the congregation, pray-

ing the reverend presbytery of Albany, to install the Rev. Hooper Cumming, and to discontinue all proceedings against him. And whereas the following persons, to wit : Isaac Hempted, John T. B. Graham, Isaac Lucas, Wm. Eaton, John M'Lachlin, David E. Gregory, and Joseph T. Rice, were appointed to present the said memorial.

Mr. Cum-
ming's Tri-
al.

Communi-
cation from
the com-
missioners
of third
church.

" Thereupon, *Resolved*, in case the said persons be unable to obtain the objects of the said memorial, that then they respectfully pray the said presbytery to postpone indefinitely all further proceedings against the Rev. Mr. Cumming.

" We are, gentlemen, your ob't. serv'ts.

(*Signed*) JOHN M'MILLAN, *Ch'n.*

" DAVID E. GREGORY, *Secretary*,

" JAMES LOW, *Asst. Sec.*

" *Albany, April 21, 1817.*"

Resolved, That this paper be recorded.

A motion was made by Dr. Hosack, and seconded by Mr. Hovey, that the charge of intemperance be added to the charges already tabled against the Rev. Hooper Cumming, and that the clerk be directed to cite the witnesses to substantiate the same.

A resolu-
tion for ad-
ding ano-
ther
charge to
the libel.

Dr. Nott moved that the resolution of Dr. Hosack be referred to a committee, to consider whether, under all circumstances, it is the duty of presbytery at this time to proceed to the prosecution of Mr. Cumming on this additional charge. The motion being seconded, was carried, and Messrs. Wells, Smith and Nash were appointed. The committee presented their report as follows :

Referred to
a commit-
tee.

" The committee to whom was referred the resolution of Dr. Hosack, for adding the charge of intemperance to the charges alrea-

Mr. Cum-
ming's Tri-
al.



Commit-
tee's report
thereon.

dy tabled against the Rev. Hooper Cum-
ming, beg leave to report :

That whereas it is now apparent that the honor of religion and this presbytery require, that the conduct of the Rev. Hooper Cumming should be enquired into relative to intemperance, which common fame does so loudly proclaim. And whereas your committee are not in possession of sufficient evidence, on the subject of Mr. Cumming's alleged insanity, to lead them yet to concur in the opinion publicly expressed by the Moderator touching that subject, and now repeated to this committee ; they are, therefore, of opinion, that the honor of religion, and character of presbytery, do require an investigation of this subject, and they therefore recommend, that an additional charge against the Rev. H. Cumming, in the words following, viz. " Also, with the intemperate use of spirituous liquor, indicated on some occasions, by the quantity of liquor drank ; and on others, by conversation and conduct, indicative of inebriety and derogatory to the ministerial and even to the christian character," be added to the charges already tabled against him. Witnesses to support the charge, Daniel I. Toll and Mr. Clute.

Commit-
tee's re-
port re-
specting an
additional
charge.

The report
accepted ;
a charge of
intemper-
ance add-
ed.

On motion, *Resolved*, that the above report be accepted. That the same committee be continued, and that it be their duty to make out a complete list of witnesses, and transmit the same to the temporary clerk ; whose duty it shall be to furnish the Rev. H. Cumming, with a certified copy of all the proceedings of presbytery, relative to this additional charge, and to cite him, in the name of this presbytery, to appear at their next meeting and answer the same.

Dr. Nott requested presbytery, that a committee be appointed to converse with the Rev. H. Cumming, relative to this charge, before the same be formally acted upon; and that if he shall give such explanations, or declare himself willing to make such concessions, as shall, in their opinion, go to save the honour of religion without a formal trial, that the clerk may, at their request, withhold the citation until the next meeting of presbytery.

Mr. Cum-
ming's Tri-
al

A commit-
tee to con-
verse with
Mr. Cum-
ming there-
on.

Mr. Wells and Mr. Platt were appointed the committee.

Adjourned. Closed with prayer.

Schenectady, July 24, 1817.

The presbytery of Albany met on the call of the moderator, expressed in the following circular.

“ Having been requested by two ministers, and two elders, to convene the presbytery of Albany in Schenectady, for the purpose of issuing the trial of the Rev. Hooper Cumming, and of attending to such other business as may regularly come before them; you are hereby notified, that the said meeting will be held in Schenectady, on Thursday, July 24th, at 2 o'clock, P. M. when you are requested to attend.

Circular
convening
presbyte-
ry.

(Signed) ELIPHALET NOTT, *Mod.*
July 2d, 1817.

PRESENT AS FOLLOWS.

MINISTERS.

Rev. ELIPHALET NOTT, D.D. *Moderator.*

SIMON HOSACK, D. D.

JOHN HALIDAY,

REUBEN SEARS,

JOHN CHESTER,

NOAH M. WELLS,

DANIEL O. GRISWOLD,

ARTHUR I. STANSBURY,

Members
of the
court.

Mr. Cum-
ming's Tri-
al.



Members
of the
court.

Rev. HOOPER CUMMING,
JONATHAN HOVEY,
HALSEY A. WOOD,
REUBEN SMITH.

ELDERS.

ANANIAS PLATT,	1st church, Albany,
CHESTER BULKLEY,	2d church, Albany,
AARON HAND,	3d church, Albany,
ALEXANDER KELLY,	Schenectady,
ISRAEL COLLINS,	Amsterdam,
SAMUEL D'FOREST,	Ballston,
EZRA NASH,	Milton,
DAVID ALLEN,	New-Scotland.

Read the minutes of the last meeting.

At the request of commissioners from the third church, Albany, presbytery had an interlocutory meeting.

The committee appointed at the last meeting of presbytery, to converse with Mr. Cumming, on the additional charge of intemperance, included in the libel preferred against him, reported as follows :

The committee appointed to wait on the Rev. Hooper Cumming, relative to the charge of intemperance beg leave, to report :

Report of
the com-
mittee ap-
pointed to
converse
with Mr.
Cumming.

"That they waited on Mr. Cumming. and requested a private interview with him, which he declined, stating that he would have no private conversation with any committee from presbytery. The committee then, in presence of Mrs. Cumming and John T. B. Graham, Esq. enquired of Mr. Cumming whether he had received any communication from Mr. Wood, as clerk of presbytery, relative to the charge of intemperance being tabled against him ; he informed us he had. The committee then stated to him, that their commission was in some measure superseded since he was already in possession of the

charge. The question was then asked, whether the express object of the committee was to obtain from Mr. Cumming, a confession of this crime? In answer the committee stated, that a confession from Mr. Cumming (if he knew himself guilty) would stop the process now in train. He declared himself entirely innocent of the alleged charge of intemperance, and that it had originated in a spirit of marked hostility against him, and that he would never appear before presbytery to answer to such allegations, as it was evident that he could get no justice in that body.

(Signed) N. M. WELLS, }
ANNANIAS PLATT, } *Com'te.*

Mr. Aaron Hand, the elder present from the third church, Albany, requested that Mr. J. T. B. Graham, be admitted for the purpose of reading certain documents addressed to presbytery.

Leave having been granted, Mr. Graham was admitted, and read the following :

“ At a meeting of the male members of the third presbyterian Congregation of the city of Albany, convened in their church on the 23d July, 1817, agreeable to notice given from the pulpit.

Mr. Cumming's Trial.

Report of the committee appointed to converse with Mr. Cumming.

Resolutions of the 3d church appointing 12 commissioners.

“ Mr. M'Millan, being called to the chair, and John T. B. Graham, Secretary ; the following resolutions were unanimously adopted :

“ *Resolved*, That twelve commissioners be appointed to attend the presbytery, to convene in Schenectady, on the 24th inst. and assist in conducting the trial of the Reverend Hooper Cumming, and that the following gentlemen comprise said commissioners, John V. N. Yates, J. T. B. Graham, James Warren, Joseph Frey, John M'Lachlin, Garrit V. Z. Bleeker, Matthew Gregory, David E.

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ming's Tri-
al.



Gregory, Joseph T. Rice, Isaac Hempsted, Asher Riley, Solomon Southwick.

“ *Resolved*, That placing the fullest confidence in the ability, integrity and discretion of the above named commissioners, we will faithfully sanction the course they or a majority of them (as circumstances may require) shall pursue.

“ *Resolved*, That the proceedings besigned by the chairman and secretary, in behalf of this meeting.

(Signed) “ JOHN M'MILLAN, *Ch'n*.

“ J. T. B. GRAHAM, *Secretary*.”

“ On Wednesday, July 23d, 1817,

Declara-
tion by the
3d church
of their
opinion of
Mr. Cum-
ming.

“ The male members of the third presbyterian congregation, in the city of Albany, met in their church in pursuance of public notice previously given, and after having appointed commissioners to attend the Rev. Presbytery of Albany, at Schenectady, on the 24th instant ; they proceeded to express their sentiments, in relation to their beloved pastor, the Reverend Hooper Cumming, in manner following, viz.

“ The sentiments of the congregation unanimously remain unaltered. Their feelings toward their minister are what they were at the date of, and as expressed in, the memorial which our commissioners presented to the presbytery at their last meeting. Our respect, confidence and affection for Mr. Cumming are constantly increasing, insomuch that no event would be considered by us more deplorable than his separation from us.

“ By order of the congregation, passed unanimously.

(Signed) “ JOHN M'MILLAN, *Ch'n*.

“ J. T. B. GRAHAM, *Secretary*.

“ I certify that the meeting at which the

foregoing sentiments were expressed, was very numerous and perfectly harmonious.

(Signed) "JOHN M'MILLAN, *Ch'n.*"

Mr. Cum-
ming's Tri-
al.



Mr. Graham having withdrawn, Mr. Hand stated officially the request of the third church, that all further proceedings against the Rev. Hooper Cumming be stayed, and that he be forthwith installed. In supporting the above request the elder produced a letter addressed by the Rev. E. D. Griffin, D. D. of Newark, (N. J.) to the elders and trustees of the third church, and dated the 17th instant, which was read, and is as follows :

Sd church
requests
that the
proceed-
ings be
stayed and
Mr. Cum-
ming in-
stalled.

"*Newark, (N. J.) July 17, 1817.*

"GENTLEMEN,

A letter
from Dr.
Griffin.

"Your favour of the 12th inst. was received. You and Mr. Cumming only do me justice in believing that for the 'welfare' of your 'beloved pastor' I have 'ever been solicitous.' He is to me as a son, and a son tenderly beloved. I have wept over his misfortunes, and next to his own parents have suffered more, I suppose, than any one else, in his sufferings. Before the shock which he received from the lamented death of his wife, no young man was more deliberately prudent and correct in all his conduct. He was under my eye for about four years, and for a considerable part of that time was my pupil and lived under my roof, and I can truly say that he was beloved, in no ordinary degree, by all that knew him. That his mind received a shock by the misfortune above alluded to, which in a considerable degree unsettled him, I and his other friends who have watched him, and have had the best opportunity to judge, possess the fullest evidence. The charge, and the facts which we have witnessed, would, I am persuaded, leave no doubts

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ming's Tri-
al.



Letter
from Dr.
Griffin re-
specting
Mr. Cum-
ming.

on the mind of any *physician* in America. As the effect of the shock was but partial, we have fondly hoped that with kind treatment, he would altogether recover ; and as it has arisen from overwhelming affliction, we know that trouble added to grief would only increase the malady. We have believed that he needed the balm of sympathy and kindness, rather than the rod of discipline, and have learned from experience, that the latter does hurt, rather than good. It is a grief to me that Mr. Cumming has been ever the occasion of division and contentions in the church ; I pray God that these unhappy wounds may be healed ; I should be pained if any men should suffer by these means. It is not for me to make any suggestions to influence your presbytery, in whose piety and wisdom I have much confidence. I can only say that if I was a member of that body, I should vote in favour of suspending all discipline ; and I will add, that I believe every member of that venerable body would be of the same opinion, if they had been in a situation to know, all that I have known of the case.

“ I have respectfully weighed your request, that I would attend the meeting of presbytery next week. After every view which I have been able to take of this subject, my impression is, that such a measure would do no good, but would really do hurt. This is also the opinion of Mr. Cumming's parents ; you must therefore excuse me from this step. Wishing you the divine presence and direction, I am, gentlemen, with much respect, your obedient servant,

(Signed)

“ E. D. GRIFFIN.”

“ To Messrs. Aaron Hand and Isaac Lucas,
elders of the third presbyterian congregation

in Albany ; and Messrs. John Shaw, John M'Lachlin, James Cumming, J. Warren, Hugh Humphrey, and Joseph Hay, trustees of said congregation."

Mr. Cum-
ming's tri-
al.



He also stated that the father of Mr. Cumming had been at his house, and declared that at times his son had been deranged ; that an elder of Mr. Cumming's former church in New-Jersey affirmed the same ; and that he (Mr. Hand) now believed it himself. That he believed Mr. Cumming was deranged when presbytery last sat at Albany for the trial of Mr. Chester, having seen proofs in his behaviour of such a state of mind ; but since that time he has seen nothing in Mr. Cumming's conduct, but what was perfectly correct, and that he believed from his conversation and conduct, that Mr. Cumming was a christian.

Mr. Hand's
statement
respecting
Mr. Cum-
ming's in-
sanity.

At the request of Mr. Hand, it was moved and carried, that Mr. Isaac Hutton be introduced as a witness, on the subject of Mr. Cumming's insanity.

Mr. Hutton was introduced accordingly, and having been solemnly sworn, deposed as follows :

" I have had but one opinion respecting Mr. Cumming's insanity. I have long believed, and do still believe, that Mr. Cumming has been partially deranged ; and ascribed the impropriety of his conduct to that cause. I have myself seen but one instance in Mr. Cumming's conduct that had the appearance of insanity ; my opinion is formed from the instances that have been related to me." The following question was proposed by Mr. Chester.

Ques. Can you state any particular time

Mr. Cum-
ming's Tri-
al.

Testimony
respecting
Mr. Cum-
ming's in-
sanity.

or place in which you supposed he was not in his true mind ; if so, when and where was it ?

To which Mr. Hutton replied :

Ans. " At my own house, on the day he was said to have preached Toplady's sermon ; there appeared to be a wildness in his conduct, as though his mind was not perfectly right."

The following question was then proposed by Mr. Chester :

Ques. Did you at such time suppose that he was not a moral agent, of course not accountable for his actions ?

Ans. " I should not judge that his insanity was such as to destroy his moral agency, but I overlooked his conduct on that consideration."

Mr. Hutton having retired, presbytery had a recess till half past seven o'clock.

At the close of the recess, presbytery met and proceeded to business.

Mr. Cumming read, and laid on the table of presbytery, the following communication :

" *Schenectady, July 24th, 1817.*

Communi-
cation ad-
dressed to
presbytery
by Mr.
Cumming.

" To the Reverend presbytery of Albany,

" The Rev. Hooper Cumming feels thankful to the moderator, for the suggestion that he should be indulged with the privilege of offering any remarks he wished, on the subject of Mr. Hand's request.

" He gladly embraces the opportunity afforded of reducing his observations to writing.

" It is his fervent desire to be at peace with all men. He longs for the blessings of ministerial communion with his brethren in Albany. He deeply regrets that any circumstances should have arisen to obstruct a free interchange of social and ministerial offices.

" It is moreover his ardent prayer, that

harmony may be restored to the agitated, distracted churches in Albany. The members of the third congregation are very desirous that such an even should transpire. They are already much inclined to do every thing in their power to effect the object. Mr. Cumming believes, that not a little of this spirit has, under God, originated in his numerous exhortations to brotherly love. Nothing would give him more heart-felt joy, than to become reconciled to all those whom he has considered his enemies. He can appeal to the searcher of hearts, that there is not a man on earth, toward whom he indulges feelings of hatred ; that there is not a man on earth whom he cannot fold to his bosom.

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ming's Tri-
al.

Communi-
cation from
Mr. Cum-
ming.

“ He desires to be on terms of the most perfect good understanding with all his brethren of the presbytery. When convinced that he has injured one of them, or any other individual in the world, he is willing at once to give the utmost christian satisfaction.

“ These are the reasons which convince him that it is desirable, to arrest all further proceedings on his case, and proceed forthwith, to his installation.

“ In regard to the charges which have been tabled against him, he remarks, that as to plagiarism, if he thought that he had made an improper use of other men's compositions in his sermons, he would freely acknowledge and deplore it. He has purchased a large and valuable library for the purpose of reading it, and improving by the perusal. He deems it perfectly lawful to embody in his productions, the ideas of other men, but the order, the arrangement, the language should, and shall be, his own.

“ Respecting breach of promise alleged

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al.

Communi-
cation from
Mr. Cum-
ming.

against him, he observes, that he has not, since a member of this body, violated the engagement he entered into with the presbytery of Jersey, in regard to the use of other men's sermons.

“ As it respects the charge of falsifying the truth, by stating that the manuscript sermons, which he delivered in Albany, February, 1816, had been put into the hands of Chancellor Kent, who acquitted him of the charge of plagiarism, he does most solemnly and unequivocally aver, and would do it on his death bed, that he has not the faintest recollection, ever to have said so. In the month of April, 1816, Miss Abigail Steele, a sister of Mr. Webster, on a visit to my family, stated that the Chancellor had declared I was not a plagiarist. This observation I have since repeated; but I do not at all remember, that I ever had any conversation with Mr. Webster, or any other person, on the subject. I have enquired of my wife, who dined with me at Mr. Webster's at the time alluded to, whether any conversation took place on the subject; and she does solemnly declare that she heard none.

“ In regard to the 4th and last charge, which is intemperance, Mr. Cumming remarks that this is among the least of his temptations. His animal spirits are apt to overflow. Men little acquainted with him have, no doubt, often thought that those spirits originated in the application of artificial stimuli; but, Mr. Cumming positively assures this presbytery, that he has not been intoxicated since he was ordained a minister. The trials through which he has been called to pass, since February of this year, have put him, peculiarly, on his guard in respect to an indulgence in extraordinary cheerfulness, and

have made him more than ever, careful to maintain that gravity, which became the ministerial character.

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al.



“ Mr. Cumming further remarks, that the reason why he did not attend the last meeting of presbytery, was, that he had thrown himself in the arms of his beloved people, who advised, without a dissenting voice, that he should remain at home. His feelings toward the presbytery were at that time very unpleasant. He rejoices in being able to state, that he now indulges sentiments entirely the reverse, and trusts, that such will be the course of measures as to justify and increase this state of mind.

“ All which is most respectfully submitted.
(Signed) “HOOPER CUMMING.”

On motion of Mr. Wells, certain extracts from the minutes of the presbytery of New-Jersey, having respect to former conduct of Mr. Cumming, and bearing on the question of his sanity, were read, as follows :

MINUTES OF THE PRESBYTERY OF JERSEY.

MORRISTOWN, DEC. 13th, 1814.

Mr. Keene, elder from the 2d church, Newark, asked supplies for that congregation, on the ground that their minister, Mr. Cumming, had declared, that he was no longer their pastor, and had accordingly ceased to perform ministerial duties among them.

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from the
minutes
of Jersey
presbytery.

The following letter, addressed to the moderator of presbytery, was received and read, viz.

NEWARK, DEC. 1st, 1814.

Reverend and Dear Sir.

I wish you to inform the presbytery of Jersey, at their next meeting, that I consider myself as no longer one of their members. For more than two months past, my mind has been called to the study of church government.

The result is, a deep-rooted conviction, that neither

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presbytery.

the word of God, nor early and authentic history, afford a warrant for presbyterianism. This, added to the cruel treatment which I formerly experienced, and to the encouragement given to the minister of the first church in this town, still to persecute and revile me, induces me to withdraw from your connexion, and to declare myself no longer amenable to your authority. It will, therefore, be altogether vain for the presbytery to address any communication to me, as I shall pay no regard to a single one of their injunctions.

On the next Sabbath, with the permission of my Divine master, I shall preach my farewell sermon to the dear church and congregation, over which I have, for more than three years, presided.

Accept, my dear sir, the assurances of my high esteem, and warm affection.

Tender them, also, to my friends in the presbytery; and declare, in my name, to my enemies, that I sincerely forgive them all their offences.

(Signed)

HOOPER CUMMING.

The presbytery proceeded to deliberate on the letter from Mr. Cumming. Each of the members were called upon, in the order of the roll, to express their opinions of the course which the presbytery ought to pursue in this affecting business. In the progress of this deliberation, it was stated, by several members, that reports were in circulation unfavorable to the moral character of Mr. Cumming.

The presbytery then appointed Mr. Armstrong and Mr. John McDowell, a committee to draw up a minute on this subject, embracing the sentiments expressed by the members generally, and to report to-morrow morning.

DECEMBER 14th, 1814.

The committee appointed to draw up a minute, embracing the sentiments expressed by the members relative to the course which the presbytery ought to pursue in regard to Mr. Cumming, made a report, which being read, and amended, was adopted, and is as follows, viz. "That, considering the circumstances in which Mr. Cumming has attempted to cast off the authority and

withdraw himself from the connexion of the presbytery, while his moral character labours under the imputation of gross and scandalous misconduct, and has been stated to the presbytery; while he was evidently under the apprehension that charges of immorality would be exhibited against him, it is, therefore, the indispensable duty of the presbytery, in the first place, to institute an enquiry on this subject, and call Mr. Cumming to answer to the charge which, in common fame, lies against his moral character, in the case of his reporting the votes for a president of the auxiliary bible society in Newark, and its vicinity; and for preaching the sermons of other men, and this too, with aggravated circumstances of guilt. And inasmuch as the letter he has addressed to the presbytery, at the present meeting, seems evidently inconsistent with christian candour and meekness, and contrary to his solemn promise at the time of his ordination, to be subject to his brethren in the Lord, and contains, also, slanderous imputations against a member of this presbytery, implicating, likewise, in an uncharitable manner, the conduct of the presbytery, it is therefore the duty of the presbytery to call him to answer for his unchristian conduct in these particulars also.

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al.

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Your committee, therefore, recommend that the presbytery appoint a time and place for the purpose, and cite the Rev. Hooper Cumming to appear before them, and answer to the following charges, viz.:

I. That he acted dishonestly, and did virtually falsify the truth, in reporting the votes for president of the auxiliary bible society of Newark, and its vicinity, in June or July last.

II. That he has been guilty of preaching the sermons of other men, and this too, with aggravating circumstances of guilt.

III. That he has treated the presbytery in an undutiful and contemptuous manner, in violation of his ordination vows and obligations, and has wickedly slandered one of the members of the presbytery, in his letter received by the presbytery at their present meeting; and as Mr. Cumming has expressed in his letter, a resolution

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al.

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to pay no attention to any thing the presbytery may say to him on this subject, it will be expedient to appoint a committee of three members of the presbytery, to serve him with the citation, and labour with him, to bring him to a sense of his duty, in this matter.

Resolved, That the presbytery will meet at Elizabethtown, to attend to this business, on the first Tuesday of January next, at three o'clock, P. M.

Resolved, That the moderator issue his citation to the Rev. Hooper Cumming to appear before the presbytery, at the time and place above mentioned, to answer to the charges above specified ; and that he also issue his citation to the following witnesses, to appear also, at the above time and place, to give testimony in the above charges, viz. on the first charge, Henry Mills, William Ward, Ephraim Beach, Moses Lyon, James Crane, Calvin S. Crane, and George P. Downing.

On the *second* charge, John C. Burnet, Aaron Ward, John Taylor, Henry Mills, Philip C. Hey, and Rev. Enoch Burt.

On the *third* charge, Mr. Cumming's letter.

Resolved, That Mr. Chandler be appointed to supply, in the second church, Newark, on the fourth Sabbath in this month, and Mr. M'Dowell, the first Sabbath in January ; Mr. Condit and Mr. Thompson, ministers, and Mr. Steel, elder, were appointed a committee, to serve Mr. Cumming, and the witnesses, with a copy of the citations, and to labour with Mr. Cumming to bring him to a sense of his duty in this matter.

ELIZABETHTOWN, JAN. 3d, 1815.

The committee appointed to serve Mr. Cumming and the witnesses with a copy of the citations, and to labour with Mr. Cumming to bring him to a sense of his duty, reported, that they had performed the duties assigned them.

Mr. Cumming appeared in the presbytery agreeably to the citation served upon him. Mr. Joseph T. Baldwin and Mr. Joseph L. Keene, appeared in presbytery, as commissioners from the second presbyterian church in Newark, and requested a dissolution of the pastoral

relation, between the Rev. Hooper Cumming and that congregation. Mr. Cum-
ming's Tri-
al.

They proceeded to deliberate on the mode of proceeding, in prosecuting the charges exhibited against the Rev. Hooper Cumming, when some members of presbytery stated in their place, that there is reason to believe, that Mr. Cumming has been, at times, for some time past, in a state of partial derangement: it was therefore on motion, *Resolved*, That the presbytery do inquire into this matter, previous to trying the charges exhibited against him. Extracts
from the
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of Jersey
presbytery.

Citations were issued to the following persons to give testimony in this case, viz. General John N. Cumming, Joseph T. Baldwin, Aaron Ward, Dr. James Lee, David Doremus, Abraham Miller, Col. James Hedden, John C. Burnet, and Dr. John Ward.

The presbytery having examined under oath, Joseph T. Baldwin, Gen. John N. Cumming, and Rev. Uzal Ogden, adjourned to meet to-morrow morning, at nine o'clock.

JANUARY 4th, 1815.

The minutes of the last session were read; the presbytery proceeded in the examination of witnesses on the subject of Mr. Cumming's partial derangement. The following witnesses were examined, viz. Mr. Joseph L. Keene, Mr. Aaron Ward, Mr. John Chandler, jun. Dr. James Lee, Mr. John C. Burnet, Mr. George R. Downing, Mr. Samuel H. Cox, Rev. Stephen Thompson, Rev. Thomas Picton, Rev. John M'Dowell, Rev. Daniel A. Clark, Mr. Lewis Atterbury, Rev. Gershom Williams, Rev. Cyrus Guildersleeve, and Rev. James Richards.

The whole of the testimony recorded on the subject of Mr. Cumming's partial derangement was read.

After prayer for divine direction, the presbytery proceeded to deliberate on the testimony. The members were called upon, in the order of the roll, to express their opinions on this subject. The presbytery having heard a few of the members, adjourned to meet to-morrow morning at nine o'clock.

JANUARY 5th, 1815.

The members of the presbytery, proceeded, in the

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ming's Tri-
al.

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of Jersey
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order of the roll, to express their opinions on the subject of Mr. Cumming's partial derangement. After long deliberation on the subject, it was on motion,

1st. *Resolved*, That from a deliberate view of the whole testimony now before the presbytery, in the case of Mr. Cumming, there exist strong symptoms of a partial derangement.

2d. *Resolved*, That in view of the above decision, it will not be proper to proceed to the trial of Mr. Cumming, on the charges exhibited against him.

3d. *Resolved*, That the witnesses be dismissed, and the charges be hereby withdrawn.

4th. *Resolved*, That while the presbytery deeply regret the circumstances of this case, they feel themselves constrained to declare, that they do not consider Mr. Cumming in his present state of mind, duly qualified to perform ministerial duties, nor can they countenance his being employed in their churches, until the presbytery shall receive satisfactory evidence of a favorable change.

Ordered, That the testimony taken, in this case, be put upon the files of presbytery.

Resolved, That the pastoral relation between the Rev. Hooper Cumming and the second church, Newark, be dissolved, and it is hereby dissolved, agreeably to the request of the commissioners from said church, the father of Mr. Cumming concurred in the same, and the congregation is hereby declared vacant.

NEWARK, JUNE 20th, 1815.

The following communication was received from the Rev. Hooper Cumming, viz.

To the presbytery of Jersey.

HAVING given you much uneasiness, on former occasions, I should not venture, at this time to trouble you, but for the confidence I have in your lenity and christian benevolence.

My heavy and oft repeated afflictions have, while disturbing my repose, and giving my mind an unaccustomed direction, ruffled my spirits, excessively agitated my feelings, and produced a hurry, a rapidity, an incoherence and inconsistency, which did not mark my deport-

ment in former days. These things I do most fervently deplore ; in every review of them, I am humbled and sincerely grieved ; it pains my heart, to a degree I can never express, that I have wounded the cause of my dear Redeemer. I shall carry with me to my grave the bitter remembrance, that on my account the way of truth has been evil spoken of.

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I trust, my fathers and brethren, that whenever convinced of having sinned against God, and his church, I mourn and repent ; and that I deeply and constantly regret all those instances, in which, though not self-possessed and deliberate, my conduct has been reproachful to the christian name. In view of the past, I do most heartily desire, during the remainder of my days, to be known as altogether devoted to my master's work ; that his grace being sufficient for me, I may be exemplary, penitent, humble, and faithful, and not distinguished, alas ! as heretofore, for waywardness, inconstancy and indiscretion.

It is the object of my present application, to obtain a removal of those obstacles, which as far as the opinion of the presbytery operates, lie in the way of my future comfort, tranquility and usefulness in the church. While impressed as you declared yourselves to be, in January last, you could consistently have done no less, than avow an opinion, and record it on your minutes, that during the continuance of the state of mind, under which I then laboured, I was not duly qualified to discharge ministerial duties. You also declared, that you " could not countenance my being employed in your churches, until the presbytery should have received satisfactory evidence of a favorable change." The justness of this decision I do not controvert. As a judicatory of the christian church, you acted consistently with your impression. And I trust that the same spirit will now operate as powerfully in my favor ; for you cannot be disposed to add affliction to affliction, and when in the view of those who best know me, I afford some presage of future usefulness in the ministry, you will not mar my prospects and give me up to despair.

I feel it important to remove, for a period, from the

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scene of my past troubles, and to seek a station more conducive to tranquility of mind. For, though I am now surrounded by the most affectionate relatives, and a large circle of tender, sympathising friends, yet my confirmed health requires a change of objects, and when I enter on that change, I wish every impediment, in the way of my usefulness, removed; every thing which tends to agitate and distress, as far as possible, done away. I anxiously desire to be engaged in doing good. An unembarrassed opportunity of being thus employed, will, as I verily believe, contribute more than all things else, to that thorough and permanent restoration, which every individual, actuated in his feelings toward me, by christian benevolence, must desire. I am gratified in trusting, that this presbytery will do nothing, that has a tendency to prevent so beneficial a result.

If I know my own heart, the prominent desire, which urges me to the present application is, that I may have an opportunity of convincing the world, that I am an humble, and conscientious, and devoted minister of Christ. For success in this effort, I think I am deeply convinced, that all the springs of my strength are in the free and sovereign, and special, and constantly exerted grace of God. To Jehovah-Jesus, I look for help, believing that he, the King of Zion, never turns a deaf ear to the cry of the poor and contrite spirit.

In reviewing the past, I not only feel an ardent, and inextinguishable desire of reformation, but cherish *one* sentiment in regard to others. It is my heart's desire to be at peace with all men, and to have every thing unpleasant between me and others, adjusted according to the gospel. As far as my efforts can be successful, whenever convinced of what is my duty in any individual case, nothing shall be wanting decisively to evince by my conduct, the sentiment just expressed.

I shall, to my dying hour, regret the manner in which I withdrew myself from your body, not so much on account of personal consequences, as because I am now convinced of what I did not then see and feel, the sinfulness of precipitately and disorderly withdrawing from any denomination, I ought to have affectionately request-

ed of you a regular dismission, to attach myself to that class of christians, in regard to whose views of church-government my mind was at that time favorably impressed. It is now my deliberate wish, to be under the watch, and to receive the counsels, of my fathers and brethren of this presbytery.

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Whatever may be my decision, in regard to the place of residence I shall select as the scene of my future labors, one thing I cheerfully promise, that, until this body shall willingly give me an honorable dismission and a recommendation to some other presbytery, I shall deem it a privilege to be under their care, and subject to their calls. And I do humbly trust, that they will not find me refractory, or in the smallest measure disposed to give them any further trouble.

Whatever may be the issue of the present application, I beg the favor of having this letter recorded on your minutes, that as they contain much, discreditable to me, they may bear testimony to my change of purpose and demeanor. I am, fathers and brethren, with much respect and affection, your afflicted friend and servant.

(Signed)

HOOPER CUMMING.

The presbytery proceeded to receive testimony relative to the present state of Mr. Cumming's mind; Gen. John N. Cumming, Dr. James Lee, Mr. Joseph T. Baldwin, Mr. Robert Cumming, Mr. Aaron Ward, Mr. Joseph L. Keene and the Rev. Uzal Ogden, were duly sworn, and gave in their testimony, which was ordered to be put on the files of the presbytery.

After deliberating some time on Mr. Cumming's case, presbytery appointed Mr. Armstrong, Mr. Riggs and Mr. J. McDowell, ministers, and Mr. Wilcox and Mr. Potter, elders, a committee to take the matter into consideration, and report to-morrow morning.

June 21st, 1817.

The committee appointed to consider Mr. Cumming's case, brought in their report. After a discussion of the report, at some length, it was agreed to postpone the further consideration of it until the first Wednesday of July next, in order to obtain further information. Mr.

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Thompson and John McDowell were appointed a committee to make further enquiry, concerning the state of Mr. Cumming's mind, and report at the next meeting.

—
NEWARK, JULY 5th, 1815.

The committee appointed at the last meeting of presbytery to enquire respecting the state of Mr. Cumming's mind, reported, that they had attended to the duty assigned them, and mentioned the result of their enquiries, and the names of persons on whom the presbytery might call for further testimony.

The presbytery proceeded to receive additional testimony, relative to the state of Mr. Cumming's mind, when Capt. Lewis Bosworth, Mr. Elias Boudinot, Mr. James Glass, Mr. Abraham Cross, Mr. Richard Leaycraft and Richard Cononer, a free black man, being duly sworn, gave in their testimony, which was ordered to be put on the files of the presbytery.

Gen. John N. Cumming and Mr. Robert Cumming were heard in addition to their testimony, at the last meeting of presbytery, and their testimony, also ordered to be put on the files of the presbytery. Presbytery proceeded to review all the testimony respecting the present state of Mr. Cumming's mind, and to consider the report, on this subject, submitted at the last meeting of presbytery, which report being duly considered, was adopted, and is as follows, viz.

The committee appointed to consider Mr. Cumming's case, reported, that from the written communication of Mr. Cumming, and the testimony given in before presbytery; they are happy to find, that there are indications of his returning fast to a sound state of mind; but they judge that the time since these favorable symptoms have been manifested, has been too short, to warrant the presbytery, at present, to remove wholly, the restrictions under which they have placed him. But as they feel a strong desire to give every encouragement to Mr. Cumming, consistent with their duty to the church, and as he wishes to spend some time within the bounds of the presbytery of Albany, where the presbytery have heard

there appears to be an opening for his being occasionally employed with usefulness. Therefore,

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Resolved, That Mr. Cumming be permitted, until the next stated meeting of presbytery, to preach the gospel within the bounds of this presbytery, or of the presbytery of Albany, in a vacancy, or otherwise, as often as he may be regularly invited so to do, by any minister of either of these presbyteries.

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Resolved, That the stated clerk transmit to the Rev. Dr. Nott, of Schenectady, an attested copy of minutes of this meeting, relative to Mr. Cumming's case, together with a copy of the decision of presbytery, in January last.

ORANGE, Oct. 3d, 1815.

Mr. Cumming, who at a late meeting of presbytery, under certain restrictions, was permitted to preach until the present meeting, appeared before presbytery, and prayed that all restrictions might now be removed, and he be restored to a full and good standing, as a minister of Christ. Two letters from Dr. Nott, to members of this presbytery, and a letter from Mr. MAuley, professor of mathematics and natural philosophy, in Union College, were read, certifying, that Mr. Cumming, since he has been in Schenectady, as far as his conduct had come under their observation, had conducted himself in a manner, rational and circumspect.

A paper was also read from Dr. Nott, certifying that at a regular meeting of the presbyterian congregation in Schenectady, of which Dr. Nott was moderator, a call was unanimously voted for Mr. Cumming, and that at the same meeting, a committee of three was appointed to prosecute this call. Mr. Price, one of this committee, and a member of the presbyterian church in Schenectady, appeared before presbytery, and also testified to the exemplary conduct of Mr. Cumming, while in Schenectady, after hearing the members in the order of the roll, express their opinions, this subject was referred to a committee, consisting of Mr. Armstrong and Mr. Picton, ministers, and Mr. Riggs, elder, to report to-morrow morning.

OCTOBER 4th, 1813.

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The committee appointed to consider Mr. Cumming's application reported, that having carefully considered all the circumstances of the case, with the testimonials offered in support of Mr. Cumming's request, his request ought to be granted, and he be considered as a minister in good standing with this presbytery, which report was accepted and adopted, and Mr. Cumming is hereby restored to a full and good standing as a minister of Christ.

The Rev. Hooper Cumming requested to be dismissed with a view of joining the presbytery of Albany; whereupon the presbytery agreed to dismiss him, and he is hereby dismissed and recommended to the presbytery of Albany, as a member in good standing with us.

Having compared the above with the original, I certify that it is a true copy of all the records of the presbytery of Jersey, relative to the Rev. Hooper Cumming, from Oct. 6th, 1813, to the present date.

THOMAS PICTON,

Stated Clerk of the presbytery of Jersey.

June 20th, 1817.

Moderator
reads other
testimony
from Jer-
sey.

Whereupon, the moderator stated, that inasmuch as the minutes of the presbytery of Jersey had been read, he deemed it to be his duty to lay before the presbytery, certain testimony transmitted to him from the father of Mr. Cumming, which he also read, as follows :

Testimony relating to Mr. Cumming's derangement. Mr. Joseph T. Baldwin, being duly sworn, deposed and said, I never saw any thing improper in Mr. Cumming, until after the death of his wife. After that event, frequently when I was in company with him, he would manifest much dejection, and suddenly, a lightness of conduct unusual for persons in a sound state of mind.

Question. Did you ever see any thing in his public performances which indicated insanity?

Answer. No; except when he touched on his troubles. He was then vehement, and appeared to lose himself.

Ques. What is your opinion with respect to Mr. Cumming's sanity?

Ans. I have supposed him, sometimes, in a partial derangement.

Ques. Has this opinion been generally prevalent in his congregation?

Ans. I have heard it frequently suggested.

General John N. Cumming, being duly sworn, deposed and said: my son, from his youth, was obedient and affectionate, until the death of his wife. After this event, he was, for some time, exceedingly dejected. He then became very trifling. He had been very careful of horses; after this, he injured them by driving; and, when spoken to on the subject, seemed unconscious of it. Mrs. Cumming and myself frequently expressed our fears on the state of his mind. He seemed to lose his natural affection, and could not bear advice or reproof. He used to be deliberate in his motions and conduct; became rapid and precipitate. Formerly, he was economical; after the death of his wife, he became extravagant; acted without reflection, in renouncing his charge; next day he applied to the Bishop of New-York for orders. The Bishop has expressed his opinion, that, in his conversation and conduct, while in his company, he acted like a deranged man. Before the loss of his wife, he was in feeble health; since, he has complained of nothing, and nothing appears to fatigue him, or injure his health. He used to be peculiarly attached to his mother, but now seems to have no more regard for her than another person.

Ques. Have you ever heard his mother say that she would be very unhappy, if she did not suppose him deranged?

Ans. Yes.

Ques. What is your opinion with respect to your son's insanity?

Ans. I have seen him, at times, when I supposed him very flighty; again, at times, he has appeared to be per-

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fectly rational; but never, since a short time after the death of his wife, has he put on that steady deportment, which he formerly manifested.

Ques. Has he lately manifested vital piety as formerly!

Ans. Seldom.

Rev. Dr. Uzal Ogden, being duly sworn, deposed and said, That he had noticed inconsistencies in his conversation; particularly, that he had heard him declare, that he was no presbyterian; and in the same conversation, express a wish to be dismissed from this presbytery to join the presbytery of New-York; and again, in the same conversation, that he did not wish to join the Episcopal church, but to form a church to his own mind.

Ques. What is your opinion with respect to Mr. Cumming's sanity?

Ans. From common report, and from the instances above mentioned, I suppose he has been partially deranged, since the death of his wife.

Mr. Joseph L. Keene, a member of the session of the 2d church, Newark, being duly sworn, deposed and said, that he had been much embarrassed on this subject, and had sometimes been ready to suppose that he was deranged; again that he was not. In conversing with him about his withdrawing from the presbyterian connexion, he appeared to be flighty. He said he was clear of the presbytery by the steps he had taken, and that the presbytery would take no further notice of him. It is my opinion, that he has, ever since the death of his wife, been at times, more or less, deranged.

Ques. Have you perceived any difference between the conduct of Mr. Cumming in the meetings of session *before* and *after* the death of his wife?

Ans. Yes; since, he has appeared to be, at times, considerably excited, and a trifling thing would carry away his mind; but when serious subjects were introduced, he would appear to be more composed.

Mr. Aaron Ward, a member of the session of the 2d church, Newark, being duly sworn, was asked:

Ques. Do you think that Mr. Cumming has been in a sound state of mind?

Ans. I do not know that I have.

Ques. Have you perceived any difference in Mr. Cumming, in meetings of session, *before* and *after* the death of his wife?

Ans. No more in session than out. I have perceived a general difference in his conduct; not that steadiness as formerly.

Mr. John Chandler, Jun'r, being duly sworn, deposed, and saith, that he had heard Mr. Cumming preach his farewell sermon; and he denounced some doctrines, such as those which made God the author of sin, and that a person to be a christian, must be willing to be damned. I was surprised, that he should renounce these doctrines, which I supposed he had taught; I went to his study and conversed with him on this subject; he said that he had never taught, but had always opposed them.

He further said, that he had been acquainted with Mr. Cumming, while a student at Andover, that there his conduct was consistent, and such as became a christian; but, that since the death of his wife, he had noticed inconsistencies in his conduct and conversation.

Dr. James Lee, being duly sworn, deposed and said, that he had been acquainted with Mr. Cumming, but a short time previous to the death of his wife. From his acquaintance with him, he judged his conduct to be consistent as a christian, a minister, and a gentleman. Shortly after the unfortunate event, he saw a change. His mind was hurried, and he would suddenly go from one subject to another. He observed him closely, as a friend, and professional man, and came to the conclusion, that his mind was unhinged; he acted from the impulse of the moment, and frequently with indiscretion and inconsistency, and as though reason was dethroned. He has continued to make his observations to the present time, and his conclusion is, that he is not perfectly sane.

Mr. John C. Burnet, a member of the session of the 2d church, Newark, being duly sworn, deposed, and said,

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that there has been a change in his conduct since the death of his wife ; cannot tell from what cause.

In session, while business was going on, he appeared rational, and could discuss a subject better than any of us. When there was no business, he would appear to be trifling, and tell jocose anecdotes ; he has observed a striking difference, since the death of his wife ; there has been a levity and want of consideration not manifested before.

Mr. George R. Downing, being duly sworn, deposed, and said, that he had conversed with him on religious subjects ; sometimes he appeared rational and instructive ; again he appeared strange ; he would frequently drop the subject, and introduce something trifling. We talked to him about his trifling ; he appeared to pay but little attention to it. About a week ago, he had a conversation with him coming from New-York ; he was very solemn. He has frequently made up his mind that he was deranged, and has mentioned the opinion to others. Again, he appeared so rational, that he did not know what to make of him.

He came into his shop, sometime ago, and put an elegant seal and key on his watch-chain, and in a trifling manner observed, how will it do for a clergyman, with these, to go into the pulpit, and preach from the words, " Be not conformed to this world ? "

A few days after he called and purchased the seal he put on his watch.

Mr. Samuel H. Cox, on his solemn affirmation, said, that he was with Mr. Cumming on a sailing party, in company with a number of gentlemen and ladies, to Sandy-Hook, during his suspension. His conduct was exceedingly trifling on the passage, so much so, that several of his church members reprovved him ; he made, in the water on the beach, an improper exposure of his person, in the presence of several ladies, and seemed to be unconscious of his situation. He has, since the death of his wife, been much more trifling than before. His opinion, as to his sanity, has been fluctuating, though upon the

whole, he is inclined to think that he is not perfectly sane.

Rev. Stephen Thompson, a member of presbytery, being duly sworn, deposed and said, that before his suspension, at his house, he was speaking of his persecution in Newark, witness suggested whether it might not be owing to his imprudence, and mentioned an expression, which, it was said, he used in prayer. Mr. Cumming seemed surprised, and observed, with a sigh, that he was a queer fellow ; and further said, that his spirits were artificial.

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Rev. Thomas Picton, a member of the presbytery, being duly sworn, deposed and said, that in the winter of 1813, when there was a revival in Mr. Cumming's congregation, witness, together with the moderator, went to Newark, according to previous appointment, to preach in Mr. Cumming's pulpit ; that previous to going to public worship, they retired to Mr. Cumming's study for prayer, in which Mr. Cumming officiated. That the prayer, considering the peculiar circumstances of his congregation and the occasion, was so remarkably short and inappropriate as to strike the attention of witness, and was the subject of private conversation between him and his colleague that evening ; and that there was a want of gravity and solemnity in his deportment which the occasion seemed to require ; that after his suspension, about August or September, 1813, Mr. Cumming visited witness, and spent the day with him ; that he appeared to manifest a surprising insensibility of the situation in which he was placed by the act of presbytery ; that, about July or August, 1814, witness visited Mr. Cumming and conversed with him on the subject of some new difficulties ; that witness was highly gratified with the calm, meek, humble and forgiving temper manifested by Mr. Cumming ; that about two weeks afterwards, he visited him again, and observed that Mr. Cumming appeared, at times, to be somewhat insensible of his situation, while in a subse-

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quent part of the conversation, he appeared to be great-
ly embarrassed and distressed.

(Signed)

THOMAS PICTON.

Rev. John McDowell, a member of this presbytery, be-
ing duly sworn, deposed and said, that before Mr.
Cumming's marriage to his first wife, he was on a mis-
sion of two weeks with him in Rockland county, (N.Y.)
that in that journey, he observed frequently, an impet-
uosity, rashness, imprudence and imperiousness in his
conduct, which astonished him; that witness frequent-
ly expostulated with him in vain; that they were to-
gether in the sleigh, and the snow left them; that Mr.
Cumming determined to go home in the sleigh without
consulting witness; that witness expostulated against
Mr. Cumming's taking his horse; but notwithstanding,
he would and did take him, to go to Ramapough, in
the latter end of the week, and left witness at New-
Hampstead, where he was to preach on the Sabbath, ten
miles distant, without any conveyance to get to him on
Monday morning, when they were to set out for home.
Witness was obliged, after preaching on Sabbath, to
get a man to carry him to Ramapough, that he might be
ready to set out for home with Mr. Cumming on Mon-
day morning. After they reached home, Mr. Cumming
wrote to witness, acknowledging that he had acted
wrong, and asked forgiveness; witness was placed fre-
quently, in this tour, in such unpleasant situations, that
he determined, on his return, never again, if he could
avoid it, to go out with Mr. Cumming on a similar mis-
sion, and expressed this determination to several per-
sons. He had no idea, at the time, that there was any
derangement in Mr. Cumming.

Rev. Daniel A. Clarke, a member of presbytery, being
duly sworn, deposed and said, that he was with Mr.
Cumming, at Andover; that he was esteemed pious;
but then he manifested, in a degree, a rash and over-
bearing spirit; but the students had no idea that it arose
from derangement. When he went into New-England,

after his suspension, he gave out as the reason why he did not preach, as witness understood, that his physician had forbidden it; since his restoration, he requested witness to preach for him, while he went to supply at New-Hampstead or Haverstraw, promising witness, of his own accord, that he would give him whatever compensation he might get. When he returned, he came to his lodgings, and thanked him for supplying his pulpit; but said nothing about compensation.

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Ques. Have you observed any difference between Mr. Cumming's conduct, before and since the death of his wife?

Ans. I have observed since, a surprising independence, as though he cared nothing for the opinion of the world, and a surprising insensibility to his embarrassments.

Mr. Lewis Atterbury, being duly sworn, deposed, and said, that in conversation with Mr. Cumming, he always appeared rational and collected, but several inconsistencies of conduct, of which he was said to be guilty, seemed like derangement; although he supposed that many of them might be accounted for from the vexations which he has been subjected to, especially from some members of his congregation.

Rev. Gershom Williams, moderator of the presbytery, being duly sworn, deposed, and said, that shortly after the death of Mr. Cumming's wife, he lodged at his father's; Mr. Cumming was late in rising; his father mentioned it to him in an affectionate manner; his reply, to witness's surprise, was tart. After his suspension, he went to see him; he was astonished at his want of sensibility of his situation; shortly before his restoration, he came to see witness, who rode out with him; he drove rapidly, and witness began to suspect that he was partially deranged; witness observed his eyes, which appeared to flash and wink very rapidly.

Rev. Cyrus Guildersleeve, a member of presbytery, being duly sworn, deposed and said, that he was with Mr. Cumming, at Mr. Thompson's, on a preaching tour before his suspension; there he appeared cheerful,

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but nothing attracted his particular notice. Next day witness was with him at Mr. Williams's, there he appeared exceedingly light, and witness felt distressed, and mentioned it to Mr. Williams. In the church he was solemn. Witness had no thought, at the time, of derangement.

Rev. James Richards, a member of presbytery, being duly sworn, deposed and said, that a short time after the death of Mr. Cumming's wife, he observed a great levity in his conduct, within six weeks, he became attentive to a young lady in witness's house. Witness talked to him, seriously, on the impropriety of his conduct, and was thanked by Mr. Cumming for his advice. At his father's, witness charged him with a falsehood, and told him that the charge certainly could be substantiated; he appeared entirely unmoved. Again, in company with Mr. Spring, witness called upon him, and charged him with falsehood. After sometime he was brought to confess his guilt and profess penitence. This was the day that Mr. Cumming went to Connecticut-Farms with Mr. Guildersleeve. Witness suggested to him that it was reported, that he had taken a certain discourse from Bradbury. Mr. Cumming submitted it to examination, and convinced witness that the report was unfounded. Mr. Cumming promised he would never again preach other men's sermons. Mr. Spring closed the business with solemn prayer. Next day Mr. Cumming, as he since confessed before presbytery, preached this discourse at Springfield, and according to his confession, it was taken from Toplady.

Mr. John Chandler, Jun'r, being called again, the question was put to him, whether he was in college with Mr. Cumming?

Ans. Yes; in the sophomore class when Mr. Cumming was in the senior.

Ques. Did Mr. Cumming bear the character in college, of having a general disregard to truth?

Ans. Not that I know of.

Ques. Had he the character of being precipitate and overbearing?

Ans. He was very active in his motions, and he was also overbearing.

Dr. Ogden further testified, that Mr. Cumming, above a year since, owed him a little more than 100 Dollars ; that Mr. Cumming drew a note in his own hand, payable in one year, with interest. Witness assigned this note to a grocer. After the note became due, the grocer informed witness, that Mr. Cumming had refused to pay him interest, alleging that he could prove, by two of witness's daughters, that he was to pay no interest; when witness's daughters were not present during the giving of the note, and knew nothing of the tenor of the transaction.

Mr. Keene, being called again, said, that in September, after the death of Mrs. Cumming, he went, in company with Mr. Cumming, to Metuchen, on horseback; that Mr. Cumming, on the way, frequently would start, and run his horse, and act in a trifling manner, until witness was ashamed of him. On the way back, he, several times, touched witness's horse, secretly, with his whip, and made him start. Witness frequently complained of him; but he denied it. Witness has seen, in his study, many whips and canes of an expensive kind, and has talked with him about it.

Rev. Stephen Thompson, being called again, said, that when he visited Mr. Cumming to cite him to attend trial, he was sensibly affected by his gay and cheerful air, which formed so striking a contrast with the distress of his friends. When Mr. Cumming expressed his intention to attend the trial, witness remarked that cunning turn which he showed in explaining his letter to presbytery, which is a frequent character of insanity. When asked to explain this clause in his letter to presbytery, "It will be altogether vain for the presbytery to address any communication to me, as I shall pay no regard to a single one of their injunctions," he gave this explanation, that he meant to say, that he would attend to no instruction respecting presbyterianism, having already made up his opinion on this subject.

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The above is a true copy, from papers on the files, of the whole testimony taken before the presbytery of Jersey, at Elizabethtown, (N. J.) on the 3d and 4th of January, A. D. 1815, relative to the state of the Reverend Hooper Cumming's mind.

(Signed) THOMAS PICTON, *Stated Clerk.*

Westfield, (N. J.) May 26th, 1817.

Extracts from the minutes of the associate reformed presbytery of New-York, containing the testimony of Rev. Messrs. Clark and M'Leod, in relation to certain declarations of Mr. Cumming, made to them ; and also, extracts from the minutes of the presbytery of Philadelphia, containing the testimony of the Rev. Dr. Neil, touching certain acknowledgments, made by Mr. Cumming to him, were read as follows :

Extract
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the associ-
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N. York.

Extract from the minutes of the associate reformed presbytery of New-York, in session at Newark, on Tuesday, the 15th day of April, 1817.

The following communication from the presbytery of Albany, was read, and laid upon the table.

"The Reverend Presbytery of Albany, request their brethren of the associate reformed presbytery of New-York, to take the testimony of the Rev. John X. Clarke and the Rev. Robert B. E. M'Leod, on the following points, and forward the same to them by the earliest opportunity.

"Questions by the presbytery of Albany to the Rev. John X. Clarke.

"1. Did you ever have any conversation with the Rev. Hooper Cumming, relative to a report, of his having preached Toplady's sermons in Albany?

"2. Did he say any thing relative to his manuscript having been submitted to Chancellor Kent, to compare with the printed sermons of Mr. Toplady ; and if so, what is all he said on that subject?

" We wish the Rev. Robert B. E. M'Leod to answer the same questions.

" By order of the presbytery of Albany.

Attest. " JOHN CHESTER, *Stated Clerk.*"

Resolved, That the request of the presbytery of Albany be granted, and that this presbytery now proceed to take the testimony therein desired.

The Rev. Mr. Clarke having been requested to withdraw, the Rev. Robert B. E. M'Leod was, by oath, purged of malice against the Rev. Hooper Cumming, and also of expecting to reap any advantage, directly or indirectly, from the testimony to be given.

The witness was then solemnly sworn, and the first question, contained in the communication, put him by the moderator, viz.

Ques. Did you ever have any communication with the Rev. Hooper Cumming, relative to a report of his having preached Toplady's sermons in Albany ; if so, did he admit, or did he deny, the truth of that report ? To which the witness answered :

" Mr. Cumming was at the house of Robert Blake, where I board, nearly a year ago ; after other conversation, I asked him in relation to a report then in circulation, of his having preached Toplady's sermons. The words of his reply I do not recollect ; the strong impression on my mind is, that he denied having preached Toplady's sermons. On this, I put to him a question, the substance of which is as follows : " If you have not preached Toplady's sermons, why do you not publish those you did preach, and thus satisfy the public ? " To this question Mr. Cumming replied, in substance, to the following effect : " I intend to publish them, and have already submitted the manuscripts to Chancellor Kent." The impressions on my mind, farther, is that Mr. Cumming said, that Chancellor Kent manifested his surprise that any such reports, as these alluded to, should be in circulation.

" This I believe to be the substance of the conversa-

Mr. Cum-
ming's Tri-
al.



Extract
from the
minutes of
the associ-
ate reform-
ed presbyt-
ery of
N. York.

Mr. Cum- tion between Mr. Cumming and myself on this subject.
 ming's Tri- The conversation was of some length.
 al.

~~~~~ (Signed) "ROBERT B. E. M'LEOD."

Extract The Rev. John X. Clarke was then called in, and hav-  
 from the ing been in like manner purged of malice, and solemnly  
 minutes of the associ- sworn, the same questions were put to him by the mod-  
 ate reform- erator, as to the former witness.

ed presbyt- To the first question, respecting Mr. Cumming's de-  
 ery of nial or acknowledgment of having preached Toplady's  
 N. York. sermons, the witness answered :

"He denied it."

To the second question, the witness replied :

"Mr. Cumming said that he had put the manuscript of the sermon rumoured to be Toplady's into the hands of the Chancellor ; that the Chancellor had compared the manuscript with Toplady's sermons, and had found no resemblance between them ; moreover, that the proposals for publishing this his sermon were in the hands of some bookseller in Albany, and that in a short time the community would be able to judge for themselves.

(Signed) "JOHN X. CLARKE."

*Ordered*, that a copy of the above testimony be forwarded by the clerk, to the clerk of the presbytery of Albany.

*A true extract.*

ARTHUR Jo. STANSBURY,  
*Clerk of presbytery.*

At a meeting of the presbytery of Philadelphia, held April 15th, A. D. 1817.

The Rev. Dr. Neil being duly qualified, made to the following questions, contained in the letter from the presbytery of Albany, the following answer, viz.

1st. Did the Rev. Hooper Cumming, after the report became current of his having preached Toplady's sermons in your late church at Albany, ever converse with you on the subject ?

*Ans.* He did.

2d. Where and when did he converse with you ?

*Ans.* In my study and about one year ago.

3d. Did he tell you in that conversation, that the report of his having preached Toplady, was unfounded?

*Ans.* I think he said it was in a great measure unfounded.

4th. How far did he admit that he had made use of Toplady on that occasion?

*Ans.* That he had adopted Toplady's plan, and, perhaps, used some of his ideas.

5th. Did he not admit, that even in making use of Toplady as far as he did, he had done wrong?

*Ans.* I think he did.

6th. Did he not say that he would not in future, make so free use of other men's sermons, as he had of Toplady's, on that occasion?

*Ans.* I do not recollect his using that expression in so many words; but understood him to intimate a hope, that the occurrence might be useful to him in future.

7th. Did you communicate the substance of this conversation to some of your christian friends?

*Ans.* I did, but cannot now say to whom.

8th. Did you not accompany the communication you thus made, with an expression of your hope, or belief, in consequence of the concessions he made, and the purpose of amendment he expressed, that what had taken place would be of service to him, and that he would not do the like again?

*Ans.* I believe he did.

"Any other testimony, touching the case, is respectfully requested to be taken and forwarded immediately." To which notice the witness answered, "As the conversation was incidental, or at least, unsought by me, many particulars have escaped my memory."

The foregoing testimony having been read to Dr. Neil, was by him approved and subscribed.

Ordered, that the stated clerk furnish the presbytery of Albany with a copy of this minute.

A true copy.

Attest. GEORGE W. JANVIER, *Stated Clk.*

*Philadelphia, April 16, A. D. 1817.*

Done in the presbytery of Philadelphia, this 16th day of April, 1817.

C. S. ELY, *Moderator.*

Mr. Cum-  
ming's Tri-  
al.

Extract  
from the  
minutes of  
the pres-  
bytery of  
Philadel-  
phia.

Mr. Cum-  
ming's Tri-  
al.

  
Petition of  
3d church  
referred to  
a commit-  
tee.

On motion, the request of the third church for dispensing with Mr. Cumming's trial, and proceeding to his installation, together with all the documents, read in support of the same, were referred to a committee, consisting of the Rev. Messrs. Hosack and Wells, with elder Deforrest.

The committee to whom was referred the request of the third church, with the accompanying documents, present the following report :

Commit-  
tee's re-  
port.

Your committee, after the examination of the above papers, and weighing the unwritten information which appeared before them, are constrained to express it as their opinion, that the request of the third congregation of Albany, to suppress all further process against the Rev. Hooper Cumming, and to proceed, forthwith, to install him as their pastor, cannot be granted.

And that for the following reasons :

1st. Because it is evident, that from a partial derangement, or some other cause, Mr. Cumming's conduct, whilst within our bounds, has in frequent and repeated instances, been such as to bring a slur on the ministerial character, and to wound that blessed cause, of which he is a professed advocate.

2d. Because he still persists, notwithstanding his statement, to deny all those things which presbytery, are sorry to have it to say, they fear can be too fully proved against him, and is thereby giving evidence, that he is, even now, not perfectly in his right mind, or is so far aberrating from the path of duty, that presbytery cannot discharge the all-important trust committed to them, by the great head of the church, and answer it to their consciences, and their God, if they should comply

with the petition of that congregation and the desire of Mr. Cumming.

Mr. Cum-  
ming's Tri-  
al.

3d. Because your committee are fully of the opinion, that the granting of their request would be inconsistent in presbytery, as they have been forced to table charges against Mr. Cumming, and no reasons whatever have, as yet, been offered to them why they should not proceed to the investigation of those charges; unless it be, that of partial derangement, which, so far as it has weight, must, in the minds of the presbytery, disqualify him, not only for the discharge of the pastoral office, but for a preacher of the word.

Report of  
a commit-  
tee on the  
petition of  
3d church

4th. Because not to issue the trial, now in train, in some way or other, must be injurious to the congregation from which the request is made, inasmuch as it must even be injurious to any people to have a man placed over them who does not, in the public estimation, uniformly support the ministerial character, whatever may be the opinion of the people of his immediate charge to the contrary.

5th. Because such a course of procedure as the request contemplates, cannot fail to be most injurious to Mr. Cumming himself. He has joined issue, thrown himself upon his trial, and repeatedly declared, that it was his earnest desire to provoke the contemplated investigation; nothing, therefore, can free him from the accusation of shrinking from this investigation, only proceeding and bringing this, too long procrastinated business, to some issue.

6th. Because, in the opinion of your committee, nothing but the issuing of this business, can calm the agitated state of the churches, and of the public mind.

Mr. Cum-  
ming's Tri-  
al.

Report of  
a commit-  
tee on the  
petition of  
3d church.

Your committee, therefore, with the very cursory view, which their limited time has enabled them to take, do express it as their opinion, that every consideration of charity and equity, do require, that the trial of Mr. Cumming be not relinquished but be issued and brought to some conclusion.

SIMON HOSACK, }  
NOAH M. WELLS, } *Com'tee.*  
S. DEFORREST, }

It was moved and seconded, that the above report, be adopted ; but before the question was put, Mr. Hand requested that the moderator might be sworn, as witness, on the subject of Mr. Cumming's insanity.

The request was granted, Dr. Nott was sworn and testified as follows :

Testimony  
of Dr. Nott  
respecting  
Mr. Cum-  
ming's in-  
sanity.

“ That Mr. Cumming was originally introduced to him as a deranged man ; that all the information he had since received from his parents and friends, assumed the fact of his derangement ; and that the impressions, thus made upon his mind, had been strengthened by his own acquaintance with him.

Witness would not be understood that his opinion had been uniform, or that it was now settled ; on the contrary, it had wavered with the changeful appearances Mr. Cumming's character assumed. At one time he had discovered so much art and system, at another so little, that it was difficult to form an opinion concerning him, and painful to be called to express one. It had however been his prevailing opinion, *that he was partially deranged* ; and whatever the character of that derangement was, whether intellectual or moral, the statement Mr. Cumming had now made, furnished conclusive evidence, that he was still labouring under it. Mr. Cumming did

not appear to have any consciousness that his present statement of facts was at variance with his previous statements; or to have any recollection of having preached other men's sermons, the proof of which was so abundant. As little did he appear to have any recollection of the repeated concessions and promises he had made on this subject, to those christian friends who had conversed with him concerning it, previous to its having become a subject of discipline; nor did he appear to have any recollection of any of those repeated and successive declarations which he had made, relative to his having placed his manuscripts in the hands of the Chancellor. There was a strange obliquity in Mr. Cumming's statements and conduct, that was difficult to explain. It appeared to the witness either that Mr. Cumming did not make those distinctions between truth and falsehood, that other men made, or that he did not feel those obligations which other men felt. He often made statements in open presbytery, and sometimes appealed with apparent sincerity for the truth of what he said, to those very members who, he must know (if he was in his right mind) were perfectly acquainted with the incorrectness of his statements; and yet witness had not been able to discover at the time any indication of distrust or of compunction in his manner, or in the expression of his countenance.

Indeed if Mr. Cumming was not a deranged man, he was, in the conformation of his mind, unlike (particularly on the article of truth) to any other human being with which witness had been acquainted; and his conduct presented a moral phenomenon he was

Mr. Cum-  
ming's Tri-  
al.

Testimony  
of Dr. Nott  
respecting  
Mr. Cum-  
ming's in-  
sanity.

Mr. Cum-  
ming's  
al.



Testimony  
of Dr. Nott  
respecting  
Mr. Cum-  
ming's in-  
sanity.

unable to explain, and concerning which he was reluctant to decide."

The following question was then put by Mr. Hand.

*Ques.* Did you not think Mr. Cumming so deranged, when he made those statements, that he did not know what he said ?

To which the witness replied,

*Ans.* " I cannot say that I ever saw him in that state."

It was asked by Mr. Hand,

2. Did you not refuse to administer an oath to him on the ground of insanity ?

The witness replied,

*Ans.* I intimated my doubts as to his entire sanity at the instance of Capt. Bosworth, who knew him well, and who informed me that he and other of his acquaintances were willing to testify that they thought him deranged.

Mr. Hand then asked,

2. Do you believe he is a fit subject for trial ?

The witness answered,

" I have heretofore stated, that while I doubted his sanity, I should be unwilling to try him by the rules by which I would try a minister of whose sanity I had no doubt. His case was one that presented peculiar embarrassments. It was difficult to say what was the cause of his aberrations, and therefore difficult to decide upon the moral character of them. While in a state of doubt, witness could lean to the side of mercy, and putting the most charitable construction on his conduct, treat him with forbearance and with kindness, and leave him in the hands of God, till his character should be further developed."

On motion, *Resolved*, That the vote on the

acceptance of the committee's report be for the present postponed.

Mr. Cum-  
ming's Tri-  
al.

The moderator then produced a letter addressed to himself, by the Rev. Dr. Griffin, dated Newark, (N.J.) April 16, 1817, which was read, and is in the words following :

“ *Rev. and dear sir.*

“ The friends of Mr. Cumming here, feel very grateful to you for your tender and faithful treatment of him, and myself among the rest. We are sorry to hear that he has fallen into new indiscretions and new troubles, and that he has been the occasion of involving you in so much perplexity. His parents agree with me that he ought from this time to give up all ideas of ever preaching again. If he is ever to be restored to a sound mind, we are now convinced it must be in some retired condition and some private employment, in which *he himself at least* shall have given up all ideas of returning to the ministry. If he does not wholly relinquish such a tho't, his mind never will be at rest till he gets back into the pulpit again; at the same time, we have that full persuasion of his derangement, that we cannot but wish and hope that he may be let off in an easy manner. Should the presbytery pronounce him deranged and unfit to preach in his present state, his friends here would be satisfied.

Letter  
from Dr.  
Griffin to  
Dr. Nott  
respecting  
Mr. Cum-  
ming's in-  
sanity.

“ That he is partially insane, we cannot permit ourselves to doubt. For the four years that he was, more or less, under my eye, after he became serious, (and most of the time my pupil, or a member of my family) he was most amiable in his disposition, correct in his conduct, and loved by all around him. I never knew a young man more beloved, my very domestics idolized him. His dispositions,

Mr. Cum-  
ming's Tri-  
al.



Letter  
from Dr.  
Griffin to  
Dr Nott  
respecting  
Mr. Cum-  
ming's in-  
sanity.

from a child, were very amiable, and wholly different from what they appeared since that fatal shock which he received at Patterson. For a fortnight after the death of his wife, he was crushed. At the end of that time his mother saw, one morning when he came out of his chamber, an evident change, from the deepest depression, to insensibility and frivolity. The cord was snapped. In a few days he was riding with a gay young girl, and as I am informed, offering her his hand. He was seen, about the same time, riding on horseback, through the streets of Newark, in full speed, *with his hat in his hand*. Different friends, when they first visited him about that time, found him insensible and frivolous, and perceived the hurried air and phrenzied eye, which suggested the true cause of his strange appearance. From the moment that I heard of the death of his wife, I was apprehensive of such an effect; and in the autumn I received a letter from him which so clearly disclosed a morbid imagination as to awaken the most serious apprehensions. The following winter and spring his troubles at Newark began. Ever since the death of his wife, his parents have seen a great change in all his dispositions. When I returned to Newark, I too could see his derangement in every motion. The *idiotism* of much of his conduct, I can account for on no other principle. *Selfishness*, with a spark of common sense, would have dictated a different course. As to his departure from the truth, I find that when he was a school boy he was constitutionally addicted to that sin; and although it disappeared at maturer age, yet it is a well known effect of insanity to render every constitutional defect more prominent. Our presbytery restored

him to his office by the advice of physicians, as a medicinal experiment ; that experiment is made, and we have done. I wish he could be kept away from presbytery on the day appointed for his trial ; yet I should be unwilling to have him leave Albany before that time, lest it should look to those, who doubt his derangement like running away. As soon as his case is decided upon, I hope you will prevail upon him to return immediately to Newark, with his family. It is to be hoped that the evidence which the presbytery has of his derangement, will save them the trouble of a formal trial. Our presbytery, before my return from Boston, dismissed all charges against him, on the ground of insanity.

Mr. Cum-  
ming's tri-  
al.

Letter  
from Dr.  
Griffin to  
Dr. Nott  
respecting  
Mr. Cum-  
ming's in-  
sanity.

" I am, dear sir, with much esteem;

" your friend and brother.

(Signed) " E. D. GRIFFIN."

He also laid before presbytery a letter addressed to himself by Gen. Cumming, the father of the Rev. Mr. Cumming, dated Newark, June 4th, 1817, which was read, and is in the words following :

" *My dear sir.*

" Some time more than I expected has been lost in forwarding the papers I promised. I hardly know what to advise, so many difficulties stand in the way. If my son could by any means be liberated from the government of presbytery, I believe it will be best for him, and perhaps it may please God, to restore to him his former state of mind. I have thought, if it should please God to bring him on a bed of sickness, and reduce his body without affecting his head, that perhaps he might be again restored to right reason. He is in the hands of God, with whom I must leave him, trusting in his mercy thro'

Letter  
from Gen.  
Cumming  
to Dr. Nott  
respecting  
his son's  
insanity.

Mr. Cum-  
ming's Tri-  
al.



Christ, knowing I nor he deserve nothing, by reason of our sins.

“I am, dear sir, with many thanks for your past services, and relying on your friendship, yours most respectfully.  
J. N. CUMMING.”

He further presented a second letter from Dr. Griffin, dated June 4th, 1817, which was read, and is as follows :

Second let-  
ter from  
Dr. Griffin  
to Dr.  
Nott re-  
specting  
Mr. Cum-  
ming's in-  
sanity.

“ *Rev. and dear sir.*

“ Since you left us, I have received your favor of April 21st, and that of April 30th. You will deem the time long that I have been silent, and so I do myself. But I have been waiting for a copy of the testimony given in before presbytery, respecting the state of Mr. Cumming's mind. To-day it has arrived, I never saw it before, and I do not think that it contains the best proof that could be exhibited. The *sudden* change at the end of the first fortnight after his wife's death, which has continued ; his extravagant fondness for trinkets ; his contracting a debt of \$2500 by such extravagances ; the general and astonishing change of the whole man ; the *foolishness* of most of his irregularities, which *selfishness* itself, with a sound intellect, would restrain ; his insensibility under his greatest trials, and sinking into sleep, as soon as his head touched the pillow, at a time when his distressed father spent a wakeful night by his side ; the prominence given to all his natural faults, a common effect of insanity ; these and other proofs are by no means set in as strong a light, as they might be in the testimony. So far as I know, it is the general opinion here that he is partially insane. I suspect there are few persons in this neigh-

bourhood who seriously doubt it; and not one among his intimate acquaintances.

Mr. Cum-  
ming's tri-  
al.

“ Under these circumstances, for the presbytery, to proceed against him, as a sane person, would be an event, in my opinion, deeply to be deplored. Past experience shows, what the philosophy of mind plainly teaches, that such a course would not reclaim, but render him more irregular. A mind diseased by affliction is not to be cured by affliction, but by kindness.

Second let-  
ter from  
Dr. Griffin  
to Dr.  
Nott res-  
pecting  
Mr. Cum-  
ming's in-  
sanity.

At the same time I feel deeply for the presbytery. Connected as he is with them, they are, in the eyes of many, responsible for his conduct. I wish it were possible for him to be fairly detached from every Judicatory on earth, without its being brought about by way of punishment; for I do not believe him a proper subject of discipline, and I would not punish disease. Were he perfectly insulated, his conduct could attach no censure to any church. How this can be brought about is harder to say. Suppose he should put in his declination, and the presbytery should simply record the fact, that he had withdrawn from them, and was no longer to be considered a member, and had done it under so many signs of derangement, that they thought proper to take no further steps. On the whole, this appears the most feasible and prudent course. And I believe if I was sure of not displeasing presbytery, I would give this advice.

(Signed)

“ E. D. GRIFFIN.”

The above letters were placed on the files of presbytery.

The following resolution was then offered and seconded:

*Resolved*, As the sense of this presbytery,

Mr. Cum-  
ming's Tri-  
al.



that there is sufficient evidence before presbytery, that the Rev. Hooper Cumming has been in a state of partial derangement previous to his coming within our bounds ; that there is at least, probable ground for believing that this has been the case, since that period, and still continues.

Rev. Dr. Coe, in behalf of the commissioners from the third church, requested that they be admitted for the purpose of giving testimony on the question of Mr. Cumming's sanity of mind.

The request was granted, and John Van Ness Yates, Esq. being introduced and sworn, testified as follows :

Testimony  
of the com-  
missioners  
to Mr.  
Cumming's  
sanity.

" I have attended Mr. Cumming's church regularly, since he came to Albany, and have been much edified by his ministry. As to his insanity, it is an idea that strikes so ludicrously that I do not know what to say. It appears to me, that for a person to carry on a regular discourse, make a regular prayer, and be regular in conversation, and yet be insane, appears impossible. As to his present insanity, I have no belief in it. I had no knowledge of Mr. Cumming before he came to Albany."

Mr. Yates having withdrawn, Mr. Solomon Southwick was introduced and sworn, and testified as follows :

" Since the trial of Mr. Chester, I have attended Mr. Cumming's church, and been frequently at his house. I never discovered any symptoms of insanity, nor do I believe that he is insane in any shape or degree."

Mr. Southwick then withdrew, and Mr. John M'Lachlin was introduced, and sworn. His testimony is as follows :

" Since Mr. Cumming has been in Albany,

I have frequently seen him, and there never appeared any insanity about him when I saw him."

John T. B. Graham was next introduced, and sworn, and testified as follows:

"I was first acquainted with Mr. Cumming in February last. Since that time I have been with him almost every day, and have never seen any thing that denoted insanity. I believe him to be as sane as any man on earth."

Mr. Graham declared that he had no doubt that the testimony of all the other commissioners would be to the same effect.

The foregoing testimony, expressive of the opinion of Mr. Cumming's commissioners, relative to his sanity since he has been in Albany, and his present sanity (though entire credit be given to the sincerity of that opinion and to the truth of the facts on which the same is founded) did not appear to furnish a sufficient reason for reconsidering the judgment of this presbytery as already expressed.

1st. Because Mr. Cumming's derangement is adjudged to be partial merely, and a kind of derangement compatible with rational conversation, except so far as truth is concerned, and compatible also with the delivery of regular discourses and solemn and impressive prayers.

2d. Because the said testimony does not go to give any solution of Mr. Cumming's persisting, for a great length of time, in preaching other men's sermons, contrary to his solemn and repeated promises, and regardless of the successive difficulties in which he thus became involved.

3d. Because it gives no solution of his having formed the strange conception, that the

Mr. Cum-  
ming's Tri-  
al.

Testimony  
of the com-  
missioners  
to Mr.  
Cumming's  
sanity.

Mr. Cum-  
ming's Tri-  
al.



report of his preaching other men's sermons, was a slander, and of his having submitted his manuscripts to Chancellor Kent, and by him been acquitted of plagiarism.

4th. Because it gives no solution of his present want of all consciousness of having, in any instance, preached other men's sermons, of which fact there is such abundant evidence already before this court.

5. Because it leaves, unexplained, his declared want of all recollection at the present, of his having told Mr. Webster, or any other person, that he had submitted his manuscripts to Chancellor Kent, as well as his declared ignorance of other points of the truth, of which there is plenary evidence before this court; which declarations now made can only be explained by supposing him still under the influence of that strange derangement, to which he is subject. whatever its nature may be and whichever of his faculties, whether intellectual or moral, may be the seat of this derangement. Whereupon the following resolutions were presented by Mr. Stansbury and seconded:

Resolu-  
tions offer-  
ed on the  
whole  
case.

*Resolved*, That this presbytery do not view the Rev. Hooper Cumming as a fit subject for discipline.

*Resolved*, That the further prosecution of the libel now pending be dispensed with.

*Resolved*, That the request of the third church, Albany, for Mr. Cumming's installation, be not granted.

*Resolved*, That this presbytery do not view themselves as responsible for any of the acts of the Rev. Hooper Cumming, either public or private.

The question was put on the resolutions severally, and the three first having passed in

the affirmative, before the question was taken on the fourth, Mr. Hand presented to presbytery a paper in the words following :

“ The commissioners from the third presbyterian church in the city of Albany, instruct the elder from that church to state to presbytery, in case the Rev. Hooper Cumming be not immediately installed, that then the said congregation and its pastor, request a regular dismissal from the said presbytery. By unanimous order of the commissioners.

(Signed) JOHN M'MILLAN, *Ch'n.*  
HOOPER CUMMING.”

Whereupon *Resolved*, That the request of the third congregation in Albany, to be dismissed from under the care of this presbytery, be granted.

*Resolved*, That the Rev. Hooper Cumming, against whom certain charges have been preferred, but who, as this presbytery have probable grounds to believe, labours under a partial derangement of mind, and has for that reason been adjudged an unfit subject of discipline, be permitted, at his own request, to withdraw from all further connexion with this presbytery ; but that it is not in the power of this presbytery to pronounce him in regular standing, or to hold themselves in any wise, responsible for his future acts, either public or private.

The doors being opened, the above determination of presbytery, was publicly read to Mr. Cumming and the commissioners from the third church, when Mr. Cumming having made a farewell address to several of the members, took his final leave of the presbytery, and formally withdrew.

Whereupon presbytery came to the following resolution :

Mr. Cumming's Trial.

The third church petitions to be dismissed.

The petition granted.

Mr. Cumming is permitted to withdraw,

but not as in good standing.

Mr. Cumming takes leave of presbytery.

Mr. Cum-  
ming's Tri-  
al.

Final reso-  
lution  
hereon.

Whereas this presbytery, after instituting process against the Rev. Hooper Cumming for plagiarism, breach of promise, falsehood and intemperance, and twice citing him to trial, has seen cause from the whole circumstance of his case to apprehend, that he is, and for some time past, has been partially deranged in mind; and whereas, the said Rev. Hooper Cumming has now formally withdrawn from under its care, in consequence whereof, this presbytery has no further inspection or jurisdiction over the said Hooper Cumming, who has gone out from them, and must be left in the hands of God, who is able to restore him to his right mind, and bring him back to a sense of his duty. Therefore,

*Resolved*, That his name be erased from the roll of this presbytery, in whose connexion, and under whose sanction he no longer exercises his ministry.

Adjourned. Closed with prayer.

— — —  
*CHARLTON, AUGUST 19th, 1817.*

Presbytery met according to adjournment, and was constituted with prayer by the moderator.

PRESENT AS FOLLOWS.

MINISTERS.

Rev. ELIPHALET NOTT, D.D. *Moderator.*

SIMON HOSACK, D. D.

THOMAS HALLIDAY,

ARTHUR J. STANSBURY,

HALSEY A. WOOD,

REUBEN SMITH.

ELDERS.

JOHN ROBINSON, Princetown,

PHILO HIND, E. Galway,

NATHANIEL BOOTH, Ballston,

DANIEL CHANDLER, Schenectady,

Members  
of the  
court.

JAMES TAYLOR,                      Charlton,  
 ABRAHAM BEECHER,                Edingburg,  
 DAVID OTIS,                        West-Galway.

Mr. Cum-  
 ming's Tri-  
 al.



A petition from the third church, in Albany, and from the Rev. Hooper Cumming, for the dismissal of Mr. Cumming in good standing, was received, read, and referred to a committee, consisting of Dr. Hosack, Mr. Halliday and Mr. Stansbury, to report thereon.

Mr. Cum-  
 ming peti-  
 tions for a  
 dismissal  
 in good  
 standing.

The committee to whom was referred the petition from the third church, Albany, presented a report which was read, adopted, and is as follows :

The committee to whom was referred the petition of the presbyterian congregation in Montgomery-street, late the third church in Albany, for the dismissal in good and regular standing of the Rev. Hooper Cumming, from this presbytery, together with the concurring request of Mr. Cumming for the same, beg leave to

### REPORT :

That they have considered the petition, referred to them, and are of opinion that the prayer of the petition cannot be granted.

Report of  
 a commit-  
 tee on his  
 petition.

1st. Because, Mr. Cumming is not under the care of this presbytery, and therefore cannot be dismissed from under its care.

2d. Because, at the time of his withdrawing, the presbytery expressly declared, that they could not dismiss him as a minister in good standing, and nothing, to their knowledge, has since occurred to alter his standing.

The committee therefore recommend, to presbytery, the following resolution :

“ Whereas this presbytery, at its meeting in the city of Schenectady, on the 24th day of July last, did pass the following resolution,

Mr. Cum-  
ming's Tri-  
al.

Commit-  
tee's report  
on Mr.  
Cum-  
ming's pe-  
tition.

viz. "*Resolved*, that the Rev. Hooper Cum-  
ming, against whom certain charges have  
been preferred, but who as this presbytery  
have probable grounds to believe, labours un-  
der a partial derangement of mind, and has  
for that reason been adjudged an unfit sub-  
ject of dicipline. be permitted, at his own re-  
quest, to withdraw from all further connex-  
ion with this presbytery ; but that it is not in  
the power of this presbytery to pronounce him  
in regular standing, or to hold themselves in  
any wise responsible for his future acts, either  
public or private."

And whereas, the Rev. Hooper Cumming  
immediately thereupon did take his final leave  
of the presbytery, and formally withdrew.

And whereas, presbytery did thereupon pass  
a further resolution, " that his name be eras-  
ed from the roll of this presbytery, in whose  
connexion, and under whose sanction he no  
longer exercises his ministry."

Therefore, *Resolved*, That this presbytery,  
having no further official connexion with the  
said Hooper Cumming, cannot pass any of-  
ficial act respecting him ; and that the pray-  
er of the petition be dismissed.

(Signed) SIMON HOSACK,  
THOMAS HALLIDAY, } Com'e.  
A. J. STANSBURY,

The report was adopted. Whereupon the  
commissioners from the church in Montgom-  
ery-street presented a paper in the words fol-  
lowing :

Mr. Cum-  
ming pro-  
tests and  
appeals to  
Synod.

" I do hereby in the most solemn manner  
protest against the proceedings of the pres-  
bytery of Albany, in reference to the appli-  
cation made by me for a regular dismission.  
And I hereby declare my determination to

appeal to the Synod of Albany on this subject, at their next session.

(Signed) "HOOPER CUMMING."

"Albany, Aug. 19, 1817."

Mr. Halliday moved that this paper be received and recorded on the minutes. The motion was amended by Mr. Stansbury, as follows :

Mr. Cum-  
ming's Tri-  
al.

Mr. Cum-  
ming pro-  
tests and  
appeals to  
Synod.

*Resolved*, That although no protest can be regularly received from a person who has formally withdrawn, and is no longer in connexion with this judicatory ; yet in view of Mr. Cumming's peculiar circumstances, and as an act of indulgence, in the same spirit which has been manifested by this court throughout the whole of its transactions towards him, the same be permitted to go upon the minutes of the presbytery.

The question being taken on the above resolution, it passed in the negative, but having, on motion of Dr. Nott, been reconsidered, it passed unanimously in the affirmative.

Adjourned. Closed with prayer.

—•—  
*SCHENECTADY, OCTOBER 1, 1817.*

Presbytery met according to adjournment, and was constituted with prayer by the Rev. Arthur J. Stansbury, who was called to the chair in the absence of the moderator.

PRESENT.

MINISTERS.

Rev. SIMON HOSACK, D. D.  
THOMAS HALLIDAY,  
JOHN CHESTER,  
ARTHUR J. STANSBURY,  
NOAH M. WELLS,  
HALSEY A. WOOD,  
REUBEN SMITH.

Members  
of the  
court.

Mr. Cum-  
ming's  
al.



## ELDERS.

NEHEMIAH B. BASSETT, 1st church, Albany,  
JOHN BROWN, Charlton.

The stated clerk informed presbytery, that a paper purporting to be an appeal from the church in Montgomery-street, Albany, had been submitted to the committee of overtures appointed by the Synod of Albany, now in session, and by that committee laid before Synod. Whereupon,

*Resolved*, That Dr. Nott, Mr. Stansbury, and Mr. Wood be a committee to defend the presbytery thereon, before the Synod.

—•—  
*SCHENECTADI*, 21st OCTOBER, 1817.

Presbytery met according to adjournment and was constituted with prayer.

## PRESENT.

## MINISTERS.

Rev. ELIPHALET NOTT, D.D. *Moderator*.  
ARTHUR J. STANSBURY,  
JOHN CHESTER,  
HALSEY A. WOOD,  
REUBEN SMITH.

Members  
of the  
court.

## ELDER.

NEHEMIAH B. BASSETT, 1st church, Albany.

The committee appointed to defend the presbytery before Synod, reported as follows :

The committee appointed to defend the presbytery of Albany before the Synod of Albany, on a document purporting to be an appeal from the third presbyterian church in Albany, beg leave to report :

That the paper referred to is in the words following :

*To the Reverend Synod of Albany.*

The respectful APPEAL of the elders and trustees of the third presbyterian church in the city of Albany, in behalf of themselves, their

pastor, and the congregation they represent.

Mr. Cum-  
ming's Tri-  
al.

The appellants, considering themselves deeply aggrieved by certain proceedings of the presbytery of Albany, deem it a duty they owe to themselves, the church, and their immediate constituents, respectfully and solemnly to protest against the same, and to appeal to your reverend body for redress.

Appeal of  
the elders  
and trus-  
tees of 3d  
church.

The appellants represent that they have heretofore earnestly prayed the presbytery of Albany to proceed to the installation of their pastor, the Rev. Mr. Cumming, and stating in strong yet respectful terms the necessity of such a measure, and its great importance to the true interests of religion, and particularly to the numerous congregation of christians over which they preside.

The appellants have repeatedly set forth to the presbytery, the peculiar circumstances under which their church was instituted, the great expense to which they had been subjected, and the solemn pledge which the appellants deemed that the presbytery had given to install the Reverend Mr. Cumming, by permitting him to separate himself from the presbyterian church in the city of Schenectady, with which he was then connected, recording an honorable dismissal from that congregation, and permitting a presentation of a call from this church, and its acceptance, to be also passed upon and recorded, without any objection whatever ; for which, and other circumstances fully detailed, connected with this transaction, your memorialists beg leave to refer your reverend body to their memorials and other documents exhibited to the presbytery, and presumed to be on their files.

Notwithstanding these appeals to the chris-

Mr. Cunningham's Trial.



Appeal of the elders and trustees of 3d church.

tian benevolence and brotherly love of the presbytery, a system has been pursued which threatens to create discontent and disquiet in the minds of a very great body of christians, and is calculated to excite a serious if not a permanent division and schism in the church, to the disgrace of religion and the prejudice of the divine cause of our beloved Master, the glorious Redeemer, whose service is perfect freedom, and whose whole life was a continued illustration of the divine precepts of charity and love, which he constantly inculcated among his disciples.

The appellants beg leave further to show to the reverend Synod, that finding the presbytery were deaf to their earnest and repeated prayers and solicitations, and that the church over which they preside was to be exiled from the sheep-fold of its Master, they were at length driven to the painful and only alternative of requesting, in connexion with their pastor, a dismissal from a presbytery who had refused to hear them or give them that christian aid and assistance, which these appellants had fondly expected at their hands. But even this request, mild, moderate, and soothing as it was, was also refused, and under circumstances (as far as it regards their pastor) of the most extraordinary, and we were about to add, of the most cruel, irritating and insulting nature.

To prove this, the appellants beg leave to submit, to the reverend Synod, a copy of some of the proceedings of the presbytery. They think it not necessary, at the present moment, to set forth all the proceedings of the presbytery with regard to the appellants, though they deem them alike exceptionable and unjust; proceedings, which they regret to say

have done more to injure the vital interests of religion, than the scoffs and ridicule of the infidel or profane.

Mr. Cum-  
ming's Tri-  
al.



The particular part of those proceedings, from which the appellants appeal, are as follows :

Appeal of  
the elders  
and trus-  
tees of 3d  
church.

“ On motion, *Resolved*, That the request of the third congregation in Albany, to be dismissed from under the care of this presbytery, be granted.

“ *Resolved*, That the Rev. Hooper Cumming, against whom certain charges have been preferred, but who, as this presbytery have probable grounds to believe, labours under a partial derangement of mind, and who has for that reason, been adjudged an unfit subject of discipline, be permitted, at his own request, to withdraw from all further connexion with this presbytery; but that it is not in the power of this presbytery to pronounce him in regular standing, or to hold themselves, in any wise, responsible for his future acts, either public or private.”

From these resolutions the appellants respectfully appeal to the reverend Synod; because,

1st. Those resolutions are a manifest violation of that first principle and fundamental rule in civil as well as in ecclesiastical jurisprudence, that no censure or condemnation can be pronounced on conjecture, belief, or “ probable grounds,” but must solely emanate from proof, and after the accused has had a fair opportunity to be heard and confronted with his accusers.

2d. Because the presbytery, in deciding, that the Rev. Mr. Cumming was at present partially deranged, rejected the positive and uncontradicted testimony of four witnesses,

Mr. Cum-  
ming's Tri-  
al.



Appeal of  
the elders  
and trus-  
tees of 3d  
church.

unimpeached, and, we venture to assert, unimpeachable; thus trifling with the solemnity of an oath, and proving a mere mockery of ecclesiastical investigation; and it might be added, the testimony of the whole congregation over which he presides (consisting of more than one thousand souls) whose evidence were offered, but by a vote of the presbytery or a resolution entered for that purpose, was deemed unnecessary to be produced; to say nothing of the flagrant insult thus offered to the good sense and understanding of the whole community, as well as many of the public functionaries of this state.

3d. Because there is a manifest inconsistency, if not a palpable absurdity, in that vote of the presbytery, which permits the congregation, of which the Rev. Mr. Cumming is the pastor, to be dismissed from the presbytery without any condition annexed thereto, and yet refuses the same right to the Rev. Mr. Cumming himself, on the ground of his present insanity. Whereas, if that vote of the presbytery were true, it would be a strong ground to suspect the sanity of his congregation, and thus both, or neither, were entitled to the same dismissal. Thus the presbytery have indicated a fearful, temporising and inconsistent policy; inconsistent with that magnanimity and justice which should characterize the proceedings of every religious institution.

4th. Because the presbytery, by permitting, at one of its repeated secret meetings, certain proceedings on the trial of the Rev. Mr. Chester to be read in evidence against the Rev. Mr. Cumming, committed flagrant and manifest injustice upon the rights of the appellants, inasmuch as no evidence ought to

have been admitted, in secret, in the absence of an accused party, who would be thus precluded from a due defence ; nor were such proceedings in any case admissible evidence against the Rev Mr. Cumming, when it was well known to every member of the presbytery, that on the trial of the Rev. Mr. Chester, the Rev. Mr. Cumming was excluded from being present at the examination of the witnesses, on the ground of his being himself a witness ; thus depriving him of the right so dear to every citizen, and to every christian, of hearing the evidence offered against him, and thus rendering that evidence wholly inadmissible and improper against him. Besides, to add to this history of strange events, when the Rev. Mr. Cumming was called upon to testify as a witness, he was rejected by this same presbytery on the ground of being a party. Thus it is evident, as your appellants conceive, that either the Rev. Mr. Cumming was unjustly and improperly rejected as a witness on the trial of the Rev. Mr. Chester, or he was unjustly and improperly excluded from being present at the said trial, and in either point of view, such proceedings ought never to have been afterwards read or received as evidence against the Rev. Mr. Cumming. In addition to all this, the appellants beg leave to observe, that the course adopted on the trial of the Rev. Mr. Chester, was not only a manifest violation of the first principles of natural equity and justice, but as the questions permitted to be put on that trial, had a tendency rather to impeach the character of the Rev. Mr. Cumming than to try the charges preferred against the Rev. Mr. Chester ; and as such course was directly opposed to the written directions and opin-

Mr. Cum-  
mings Tri-  
al.

Appeal of  
the elders  
and trus-  
tees of 5d  
church.

Mr. Cum-  
ming's Tri-  
al.

Appeal of  
the elders  
and trus-  
tees of 3d  
church.

ion of the moderator (whatever change that opinion may have afterwards suffered) such proceedings were grossly irregular and unjust.

5. Because the whole course of proceeding of the said presbytery, in regard to the Rev. Mr. Cumming and his congregation, has been in no way accordant with the true spirit of the christian religion, as the appellants humbly conceive, and altogether calculated to destroy that harmony and love, which should ever adorn and elevate the tenets we acknowledge to profess, and by which the true christian is, or ought, ever to be regulated.

For these and many other reasons, deemed unnecessary to be detailed, the appellants do hereby enter their appeal against the proceedings of presbytery, and do hereby pray the reverend Synod to reverse the same so far as may enable the Rev. Mr. Cumming and his congregation, to retire from the connexion with the said presbytery, and to become connected with some other ecclesiastical body.

And earnestly praying, that through the aid of the Divine Grace, your reverend body may be directed to such a course as will contribute to the good of the church and the honor of religion; the appellants respectfully subscribe themselves,

Reverend Synod,

Your fellow-christians in the Lord.

(By order.)

|                 |                    |
|-----------------|--------------------|
| AARON HAND,     | } <i>Elders.</i>   |
| Wm. MEADON,     |                    |
| JOHN SHAW,      | } <i>Trustees.</i> |
| J. WARREN,      |                    |
| JOHN M'LACHLAN, |                    |
| J. FRY,         |                    |
| HUGH HUMPHREY,  |                    |
| JOHN WADE,      |                    |

John T. B. Graham, Esq. appointed commissioner to present this memorial to the reverend Synod of Albany, to meet at Schenectady, on the 1st October, 1817.

Mr. Cum-  
ming's Tri-  
al.



This document your committee did and do still consider as not entitled to the character of a regular appeal ; and for the following reasons :

1st. Because the congregation by which it is presented, having been at its own request dismissed, in July last, from under the care of the presbytery of Albany, and not since received either by that or any other presbytery, is not in connexion with the Synod of Albany, nor under its jurisdiction.

2d. Because that congregation, even when it was in connexion with the presbytery of Albany, was not, nor has it since become a party at issue, either in the cause of the Rev. John Chester, of Mr. Mark Tucker, or of the Rev. Hooper Cumming.

3d. Because the document itself, purporting to be an appeal, has never been entered, or presented that it might be entered, on the records of the presbytery of Albany ; nor has any intimation of its existence been at any time given to that presbytery, nor did they know of its existence until the document itself was read before Synod.

The appeal itself being on these accounts wholly unconstitutional, the presbytery of Albany are not in any wise held to answer the same.

Still, however, your committee being acquainted with the conciliatory spirit felt and manifested by this presbytery, through all the proceedings to which this appeal refers, believe themselves authorized to declare, and they did accordingly declare on behalf of the

Mr. Cum-  
ming's Tri-  
al.



presbytery, its consent that the paper above recited should be recognized by Synod, as though it possessed every character of a regular appeal, and should be allowed to have the full effect of such an instrument, and that the presbytery of Albany were prepared for trial thereon, and willing that the same should be forthwith issued.

And your committee further report, that the Synod did thereupon take up the consideration of the proceedings of the presbytery, in relation to the several trials before mentioned, as the same appeared upon its minutes, the whole of which, with the accompanying documents, were read in Synod. And the report of a committee of Synod thereon having declared the act of presbytery in permitting the Rev. Hooper Cumming, while charged with immoralities, to withdraw from its jurisdiction to be not according to presbyterial order, your committee did not at all resist the adoption of said Report, nor attempt by any showing, to prove that the said act of presbytery was according to general presbyterial rule or usage ; and for the following reasons :

1st. Because the presbytery never did view its act in allowing the Rev. Hooper Cumming (whom they had refused dismissing) to withdraw from their jurisdiction while charged with immoralities, as an act conformable to the ordinary and regular discipline of the church, but as a departure therefrom in an extreme case.

2d. Because that act admitted of defence solely on the ground of expediency, which ground was not touched in the report proposed for the adoption of Synod. Had the general question been under consideration,

whether that act of presbytery was a proper one, your committee would have held themselves bound to show in its favour, that, though an acknowledged departure from the letter of the law, it was in a case which lay out of the contemplation of the law; the case of an individual who in the judgment of charity was deemed at the time to be partially deranged: That such an individual was not likely to be benefitted by any formal act of moral discipline, but rather by an act of indulgence, while at the same time the peace and honour of the church might in such a case be saved by simply declaring that the individual concerned no longer exercised his ministry under the sanction of presbytery: That this course of treatment toward a man not certainly sane, was not only more healing but more just, than a course of greater harshness and severity: And, therefore, tho' not within the letter of any rule of Christ's house, was nevertheless within the spirit of Christ's law. But the general question of the propriety of the act was never agitated, and therefore your committee did not feel themselves called to its vindication.

Mr. Cum-  
ming's Tri-  
al.



And as to all the other acts of presbytery, referred to in the appeal, your committee were so entirely satisfied of their scrupulous correctness, that though additional light might have been shed on some of them by explanation and remark, they were willing that the whole should be judged of from the naked record submitted to Synod; and they did accordingly waive their right of arguing the cause of presbytery, and submitted the same to the

Mr. Cum-  
ming's Tri-  
al

judgment of Synod, from the original documents, without comment or illustration.



All which is respectfully submitted.

ELIPHALET NOTT,  
ARTHUR J. STANSBURY,  
HALSEY A. WOOD.

The report was accepted.

The stated clerk laid before presbytery, the following extract from the minutes of Synod:

The committee to whom the report on the records of the presbytery of Albany, together with the appeal from the third congregation of Albany, were referred, reported the following resolutions as the decision of the Synod on said records, and also on the several points referred to in said appeal, viz.

The records of the presbytery of Albany, having been all read through, so far as related to their proceedings, relative to the trials of the Rev. John Chester, Mr. Mark Tucker and the Rev. Hooper Cumming,

*Resolved*, That the same be approved as correct and in order, except, so far as relates to their allowing the Rev. Hooper Cumming to withdraw from under their care, while charged with immoralities, which permission this Synod deem not presbyterial, the same not coming under the general rules of discipline.

And, whereas, the Rev. Hooper Cumming, late a member of the presbytery of Albany, has, while charged with immoralities, withdrawn from said presbytery. And whereas, said presbytery have allowed him to do this, on the probable ground of his partial derangement, a plea which had been set up in his behalf by Mr. Aaron Hand, one of his elders.

Therefore,

*Resolved*, That this Synod no longer recognize the said Hooper Cumming as a member of this body, or as a minister of the gospel in regular standing.

Mr. Cum-  
ming's Tri-  
al.

And for the information of the churches,  
*Resolved*, That it be recommended to the presbytery of Albany, to publish their whole proceedings in the above cases, to be sent down to the several sessions connected with this Synod.

HEZEKIAH WOODRUFF, *Ch'n*.

*Resolved*, That the stated clerk procure and superintend the printing of so much of the minutes of this presbytery, as relate to the trials of the Rev. Mr. Chester and Mr. Mark Tucker, and to the case of the Rev. Hooper Cumming; and that he have so many copies thereof printed as shall be sufficient to supply the respective sessions under the jurisdiction of the Synod of Albany.

*I certify the foregoing to be a true and faithful extract from the minutes of the presbytery of Albany.*

ARTHUR J. STANSBURY,

Stated clerk of presbytery.

**Finis.**

# ERRATA.

|      |     |      |      |                                             |
|------|-----|------|------|---------------------------------------------|
| Page | 27  | line | 28   | for "and" read <i>I</i> .                   |
| "    | 36  | "    | 27   | before "tho" read <i>which</i> .            |
| "    | 65  | "    | 6    | for "that" read <i>what</i> , in note.      |
| "    | 102 | "    | 7    | after "than" omit <i>to</i> .               |
| "    | 104 | "    | last | after "it" insert <i>would</i> .            |
| "    | 110 | "    | 6    | "and their proceedings," is redundant       |
| "    | 110 | "    | 3    | from bottom for "heard" read <i>board</i> . |
| "    | 137 | "    | 2    | after "account" insert <i>I am</i> .        |
| "    | 155 | "    | 15   | after "it" insert <i>to</i> .               |
| "    | 179 | "    | 14   | for "or" read <i>a</i> .                    |
| "    | 181 | "    | 13   | after "conceive" insert <i>but</i> .        |
| "    | 222 | "    | 19   | for "New-Ark" read <i>New-York</i> .        |
| "    | 225 | "    | 26   | for "he" read <i>I</i> .                    |
| "    | 227 | "    | 18   | for "even" read <i>ever</i> .               |
| "    | 236 | "    | 19   | after "strikes" insert <i>me</i> .          |







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